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(1)

NO. 88-615

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1988

John E., John J., and Judith A Reardon,
Petitioners,

VS

Virginia Reardon, Theodore M Costa, David C. Epler, Dr. Marshal Gordon, Dr. David M Goldstein, Judges Natal, Miller, and Scarduzio, Camden Co. Court System, and any yet unknown person or agency,
Respondents.

John E. Reardon
Petitioner,

VS

Virginia Reardon, Sgt. Smarziaski, Ann Cara, Twp. of Voorhees, and the Police Dept. of Voorhees.
Respondents.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

John E. Reardon
Oakridge Terrace-B33
Runnemede, N. J. 08078
(609) 931-5066

254 pp

QUSTIONS PRESENTED

1. Did the court have jurisdiction over the subject-matter of these cases based upon the allegations?

2. Did the court error and/or abuse its discretion and/or properly dismiss these matters that were premised upon frauds and conspiracy when it has established a trial/criminal level of pre-trial review of conspiracy, denied due process of law, denied a right to amend, denied the right to discovery, denied the right of oral argument and/or hearing to present evidence, and re-considered an issue

allready settled in violations of the principle of Res Adjudicata?

3. Did the court error and/or abuse its discretion in finding there was no "Action under Color of Law/State Action"?

PARTIES TO THE ACTIONS

CASE 87-3605

1. Robert Kaplan, Esq.

Of Slimm Dashh and Goldberg

216 Haddon Ave. -P. O. Box 222

Westmont, N. J. 08108 for

Sgt. Smazynski, Ann Cara, Voorhees Police

Dept. and Twp. of Voorhees.

2. Maloney and McCafferty

1930 E. Marlton Pike

Cherry Hill, N. J. 08003 for

Officer Van Camp, Runnemede Police Dept.

and The Boro of Runnemede.

3. David C. Epler, Esq.

41 Grove St.

Haddonfield, N. J. 08033 for

Virginia Reardon

3. John M. Armstrong, D. A. G.

Cn-116

Trenton, N. J. 08625 for

Judge Keyko

4. John E. Reardon

Oakridge Terrace-B33

Runnemede, N. J. 08078

Pro se

CASE No. 88-782

1. David M. Goldstein--Pro se

214 W. Main St., Suite 102

Moorestown, N. J. 08057

(note: this person has apparrently

moved from this address and the petitioner is unaware of his present address. The same is True of Mr. Costa Below.)

2. David C. Epler for

Himself and Mrs. Reardon

3. John M. Armstrong for

Judges Miller, Scaduzio, Natal and Smith

4. Ann C. Pearl

14th Floor Court House

Camden, N. J. 08101 for

The County of Camden

5. Marshal Gordon

C/O Thomas Sharp School

Comly & Magill Avs.

W. Collingswood, N. J. Pro Se

no answer or appearance in the District Court and

John J. Kapp, Esq.

147 Columbia Turnpike

P. O. Box 340

Florham Park, N. J. 07932 on appeal

6. Theodore M. Costa, Esq.

214 W. Main St., Suite 100

Moorestown, N. J. 08057

No appearance at any level

7. John E. Reardon for all petitioners.

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IN THE SUPREME COURT OF THE UNITED STATES

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The above named petitioners respectfully pray that a writ of Certiorari is -sue to review the Judgements and opinions of the United States Court of Appeals for the Third Circuit and of the U. S. District Court for the Eastern District of New Jersey, entered on 5/19/89, 6/19/89, 12/18/88 and 1/5/89 respectively.

OPINIONS BELOW

The opinions of the lower courts have been reproduced for the convenience of the court and are located in the appendices at pages 1-42 of the appendix.

JURISDICTION

Since this petition has been submitted prior to the expiration of ninety days from the date of the last order, jurisdiction of this court is invoked by way of 28 U. S. C. 1254(1).

STATUTES/PROVISIONS INVOLVED

1] 28 U. S. C. 1331: The District Courts of the United States shall have original jurisdiction over all cases arising under the Constitution, laws or Treaties of the United States.

2] 28 U. S. C. 1343[3]: To Redress the depri-vation, under color of State law, statute, ordinance, regulations, custom or usage, of any privilige, right or immunity secur-ed by the Constitution of the United States or by any Act of Congress provid-ing for the equal rights of citizens or of all persons within the jurisdiction of the United States.

3] 28 U. S. C. 2201: In cases of actual con-troversy within its jurisdiction, ... Any Court of the United States, upon the fil-ing of an appropriate pleading, may de-clare the rights and other legal rela-tions of any interested party seeking

such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgement or decree and shall be reviewable as such

4] 28 U. S. C. 2202: Further necessary or proper relief based on a declaratory judgement or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgement.

5] 42 U. S. C. 1983: Every person who, under color of any, statute, ordinance, regulation, custom , usage of any state or territory, subjects or causes to be subjected

, any citizen of the United States or oth
-er person within the jurisdiction there
-of to the deprivation of any rights, pri
-vileges, or immunities secured by the
Constitution and laws of the United
States, shall be liable to the party in-
jured in an action at law, suit in equity
, or other proper proceeding for redress.
6] 28 U. S. C. 1738: In order for any order
of any state to be given full faith and
credit in any other court of law, the ord
-er must bear the Seal of the Court, if
such a Seal exists, a certification from
the clerk that it is a true and valid
order, and an attestation from the Judge

that everything is in order.

7] U. S. Constitution, Art. IV, [A], Sec. 1: Full Faith and credit shall be given in each State to the Public Acts, records, and Judicial Proceedings of every other State. And Congress may by general Laws, prescribe the Manner in which such Acts, records and Proceedings shall be proved, and the effect thereof.

8] N. J. A. C. 2A: 13-1 reads: Every counselor at law or attorney at law, shall, before he is permitted to practice in any court of this state, take and subscribe in open court the following oath: "I...., do solemnly promise and swear, that I will sup-

port the Constitution of this State and the Constitution of the United States and will perform the duties of my office faithfully to the best of my ability. So help me God.

-10 reads: The county clerk of any county in which any such attorney at law shall have filed his autographed signature and certificate, as provided in Section 1 of this Act, shall, upon request, subjoin to any certificate of proof, acknowledgement or affidavit signed by the attorney, a certificate under the clerk's hand and seal stating that the attorney at law was at the time of taking such

proof, acknowledgement or affidavit duly commissioned and sworn and residing in this state, and was as such an officer of the State duly authorized to take and certify the proof or acknowledgement or affidavit as well as to take and certify the proof or acknowledgement or affidavit..... and other instruments in writting to be recorded in this state. That said proof, acknowledgement or affidavit is duly executed and taken according to the Laws of the State; **That full faith and credit are and ought to be given to the Official Acts of the Attorney at Law.**

STATEMENT OF THE CASE

On June 30, 1988 Mrs. Reardon did meet with Dr. Goldstein and Theodore M. Costa. At this meeting Mr. Costa agreed to place his name to the documents to be presented to the court[1] for proof in this matter. The affidavit submitted by Mrs. Reardon contained material Mr. Costa knew or should have known was false and/or barred from being relitigated and he submitted said affidavit and papers anyway.[2] During this same meeting Dr. Goldstein did agree to submit an unsworn letter.

1. See items 7 & 8 under the Statutes and provisions involved.

2. The affidavit submitted by Mrs. Reardon through

Mr. Costa contained the allegations of my supposed wrong doing during the marriage which had been liti -gated by Judge Paige in 1984 and found in Mr. Reardon' s favor, contained allegations that Mr. Reardon is strong enough to "rip a car door off its hinges" when the hinges of a door are tested to a tensile strength of 5000 ft. lbs. of pressure and especially when this allegation had also been raised in the 1984 trial and it was disclosed that all that was broken was a side rear window. He implied that a 125 lb. female who holds a black belt in martial arts has a reason to fear this "200 lb. 6 ft. tall man" esepcially when this man was known to have knee and back problems and in fact was out on workman' s compensation from the Postal Service for more than 6 years with back problems and implied in the affidavit that Dr. Goldstein confirmed and agrees with Mrs. Reardon' s "conslsions" that Mr. Reardon is in fact psychot -ic when in fact Dr. Goldstein admitted in reply to Federal Case #87-2823 that he had made no such finding or conclusions/agreement.

which when read separately by any person would lead any person to conclude that he was agreeing with the conslusions of Mrs. Reardon when he knew he was not. He released confidential information regard -ing Mr. Reardon to Mrs. Reardon while re- fusing to release similar information in his possession about Mrs. Reardon to the court or Mr. Reardon and in fact implied he had other information on Mr. Reardon but never once put forth this informa- tion, what it is, where it came from and the Validity of its basis. After this ma- terial was prepared, Mr. Costa turned it over to Mrs. Reardon and she did then

take this material, and after somehow obtaining access directly or through a friend, used Judge Miller's rubber stamp to place his signature with said stamp on the signature line and to also mark said papers filed by the judge.[3] when the plaintiff learned of the fact that the order was in fact strongly in question as to being that of the Judge at

3. Here the court contends that the plaintiff was merely alleging that Mrs. Reardon or a friend rubber stamped the 7/2/87 order as filed and thereby applied the standard in Lockhart v Hoenstine, 411 F. 2d 455, 460, 3rd cir., cert. den 396 U. S. 941 (1966). However, the charge intended to be implied here is that Judge Miller in no way had any connection with the 7/2/87 order and had no knowledge any such order existed till

all, Mr. Reardon filed this suit alleging the denial of due process to a fair and impartial hearing, denial of the equal protections of the law, denial of all parental rights, infliction of cruel and unusual punishment, denial of a right to trial by jury for a criminal offense.[4] Threat, intimidation and harrassment in the free exercise of my rights, and tak-

the morning of 7/14/87. See arguments under Point 2 (D) at pages of this petition

4. In Duncan v La., 391 U.S. 145, this court found that if a matter in the state could be tried in Federal Court--in that case it was a question of contempt--and if so tried required a trial by jury, then the state must grant such a right to any person wheth-er state law so provides it or not. Here, the charge against Mr. Reardon was threat to do violence conveyed

ing of money after having threatened extortion under 18 U. S. C. 1961, et seq., the petitioners contended that such processes were accomplished by means of frauds and conspiracy. The jurisdiction of the lower court was invoked under 28 U. S. C. 1331, and 28 U. S. C. 1343.

During the pendency of the proceedings, one pre-trial conference took place and at that conference, which was not transcribed in violation of common law

by mail. Under 18 U. S. C. 1768, this offense carries a possible 2 year sentence and thus required a trial by jury. This was denied to Mr. Reardon even though he waived no rights and so stated this to the state court in his papers.

notions for fairness and a record for later proof on appeals, the magistrate in no way questioned subject-matter jurisdiction At that conference, it also came to the petitioners attention that Mrs. Reardon's Counsel, respondent Epler, was not admitted to the bar of the federal court and sanctions were asked as well as an order seeking to prevent this conduct and was denied by both the magistrate and Judge Thompson (App. @ 85-92) Subsequent to this conference, Mr. Epler and Mrs. Reardon filed a motion to consol-idate case 88-782 and case 87-3605 and to dismiss on summary judgement motion

for want of jurisdiction Mr. Reardon objected to this motion, requested leave to amend, requested right to complete discov -ery, requested a right to oral argument to place into evidence his electronic re -cordings that had not been transcibed yet or in the alternative a stay to complete certain aspects of dicovery because plaintiff was unable to defend his position on his affidavit alone and all requests were denied by Judge Thompson, and the cases consolidated and dismissed.

However, prior to the filing of case 88-782 in Trenton, this same identical case was filed in Washington, D. C. on Feb-

ruary 2, 1988. In that case, the court dis-
dismissed for want of venue prior to ser
-vice of the summons and complaint. The
Appeals court later reversed on the
grounds that "venue and personal juris-
diction" are threshhold questions requir
-ed to be plead by the defendants and
may be waived if not timely plead. Both
Mr. Reardon and the State raised the is-
sue of subject matter jurisdiction over
these cases, and in answer the court
stated "The appellant alleges numerous
violations of his constitutional and Fed
-eral Statuatory Rights". (App. @ 68 & 69)

In August of 1987, Mr. Reardon was do-

ing no more than exercising his right of access to public places to try and locate a friend and ran into Mrs. Reardon in the lobby of this building. The respondent did then swear out a warrant for Mr. Reardon's arrest based on the claimed violation of this court order. Officer Smarziaski took the complaint and affidavit for the warrant whereupon he did then contact the respondent Cara to sign the warrant and whereupon she did even though the law of New Jersey--case law and rules of court--was she was prohibited from signing such a warrant without any of the warrant mandating cri

-teria being met. While the plaintiff was not arrested, he was unconstitutionally harrassed in the exercise of his rights and he filed case 87-3605 for just such threats and charged the state officers as well. *Pierson v Ray, 386 U.S. 547.* Since Miss Cara had admitted it was a common practice to randomly issue such warrants , the petitioner sought declaratory relief to prevent all future such wrongs and sought damages as well. The defendants moved for summary judgement motion on the grounds of qualified immunity and the courts granted such motion and dismissed. The petitioners were denied the

right to discovery to ascertain who adopted this "random warrant" policy, he was denied the right to amend to include the Township for this and for failure to properly supervise and failure to proper -ly train At no time would the court allow amendment to this matter and when motion to dismiss was made by Mrs. Rear-don in case 88-782 both cases were dis-missed. (App. @ 47-51) The petitioners al-so asked for any relief deemed appropri--ate by the jury or the court in both cases and this was ignored by the court.

On Appeal, the petitioners raised is-sue with the error of the court in grant

-ing summary judgement for want of juris -diction, without leave to amend, without discovery whether an attorney who acts according to some State Statute to perform a function of the state who in turn gives these actions the same full faith and credit of all state acts under Art. IV acts under color of law, whether the court was barred by *Res Adjudicata*, whether the petitioners were entitled to default or sanctions for the conduct of Mr. Epler and Mr. Potter, whether a claim was stated for relief and whether the cases should have been consolidated. On May 19, 1989 the Court of Appeals af-

firmed the lower court decision The peti -tioners then requested a Re-Hearing In Banc on the grounds that the court had failed to adhere to decisions of its own circuit, decicisions of this court and de -cisions of the various circuits in con- currence on the same topics.

REASONS FOR GRANTING THE WRIT

The petitioners respectfully submit that a petitioner for certiorari should be granted in these matters on the grounds that (1) the lower courts have entered orders which are in direct con- tradiction to the decisions of virtually every other circuit court of appeals on

the same issues;(2)the decisions are in direct contradiction to earlier decisions of its own circuit on the same issues;and (3)it has failed to uphold the decisions of this court on the same issues.

LEGAL ARGUMENTS

1]DID THE COURT HAVE JURISDICTION OVER THESE MATTERS?

The lower courts have determined that the Federal Court lacks jurisdiction over these matters. In so doing it has fail -ed to comply with decisions of other circuits and of this court. On Feb. 2, 1988 the petitioners filed this exact same

case in the U. S. District Court of Washington, D. C. While the lower court dismiss-ed for want of venue, on appeal--pending prior to the motions to dismiss in these matters, App. @51, 60, 64 & 65--the Court of Appeals, Docket No. 88-7083, found that the appellant had alleged numerous violations of Constitutional and Federal Statuatory rights. App. @66-72 . Given the pre-cise wording of 28 U. S. C. 1331 and 28 U. S. C. 1343, there is no question the lower court had jurisdiction over the subject since this was priorly before the court of appeal in D. C. , was raised by Mr. Reardon in that matter and also raised by

the State. The ruling of the lower court now countering this position is a direct contradiction of a decision of another circuit on exactly the same case and same issues.[5] (app. @93-135)

The second basis upon which the courts' decisions should be reviewed as to this aspect comes from the point of view of immunity. Immunity by nature is defined as the right of exemption from liability for having done something wrong. As this court has noted in the repleat of all case law on this general subject is that it is an affirmative de-

5. A more detailed and indepth argument on this point is made in point 2 below and abuse by the court.

fense which must be plead and proven by the defendant *Toledo v Gomez, 446 U.S. 635, 640, 1980.* Given this standard and defini -tion, it then is obvious that to grant jurisdiction to a defendant automatical- ly implies that they have committed a wrong over which the Federal Court has jurisdcition over to grant such immunity , App. @27. Since the court has granted im- munity to the Judges, it must by necess- ity have jurisdiction over the matter as the Court of appeals so found. But, if jur -isdiction is not the Questions, What is? How can the lower court claim it has jur -isdiction over the state defendants and

not the private defendants when Conspiracy, Lending of authority and sanctioning the private wrongs of the individual were alleged? *Addickes v Kress & Co., 398 U.S. 144; Lugar v Edmondson Oil, 102 S. Ct. 2744, 2748 & Civil Rights Cases, 109 U.S. 8*

2(A) Was the lower court barred by principles of Res Adjudicata from re-diciding this issue of jurisdiction and from allowing the defendants from raising it?

This court was presented with this ex act same question and problem in the case of *Sullivan v BeHiner-Elakis, 363 U.S. 335, 339, 348, 350, 1960.* In that case, the

petitioners asked this court to decide an issue of venue and jurisdiction together. However, the petitioners failed to raise that objection to venue/jurisdiction in the first forum In the instant case, the respondents did the same thing. They chose not to plead or defend in Washington, D. C. While it is true that the defendants in the previous case were served and in this case they were not, the question goes to fundamental principles of commity and justice. The petitioners appealed the decision of the district court in Washington, D. C. prior to any dispositive actions taken in this

case. In the D. C. Appeal both the petition -er and the State raised the issue of subject-matter jurisdiction In fact, the state implied such jurisdiction existed , and while the parties were aware of the appeal and its content, questions, and im- plications, they failed to participate in that matter. [6]

In *Behimer SUPRA* the court reasoned that where a party is given opportunity to raise an issue and fails to so raise it that principles of res adjudicata

6. In the appeal in D. C. the petitioners informed the appellees that according to the case law criteria the issue of subject matter jurisdiction had to first be decided before a question of venue/personal jurisdic-

apply. Virtually every circuit has upheld this principle. *In Re Korean Air-lines Disaster of 9/1/83, 829 F. 2d 1171, 1181, 1987 D. C. cir.; Nemaizer v Baker, 793 F. 2d 58, 65, 1986 2nd cir.; Hunt v Bankers Trust Co., 799 F. 2d 1060, 1068, 1986 5th cir.; Hiley v U.S., 807 F. 2d 623, 626, 1987, 7th cir.; Teyseer Cement Co. v Halla Maritime Corp., 794 F. 2d 472, 477, 1986 9th cir.; Williams v Life Sav & Loan 802 F. 2d 1200*

tion could be decided. On petition of rehearing to the 3rd circuit, the petitioners raised issue with this le -gal criteria on subject-matter jurisdiction, that the D. C. case was filed and pending prior to this case and motions and That principles of res-adjudicata applied as well as right to discovery, amend, and to be heard to present evidence.

, 1202, 1987 10th cir. and Nat. Ass. of Repub -lic Utility Com'rs v F. E. R. C., 823 F. 2d 1377, 1382, 1987 10th cir.

Given the principle of res adjudicata has been held to apply on this issue of jurisdiction in virtually every circuit, , and given that *Insurance Corp. of Ireland v Compagnie Des Bauxite, 102 S. Ct. 2099, 2105 on petition from the 3rd cir.*, which found that personal jurisdiction is a waivable defense if not timely plead, the court has failed to adopt the findings of other circuits and of this court, and has thus changed the well settled law on this issue.

(B) Did the court abuse its discretion in dismissing these matters without offering the petitioners a right to discovery? Or deny Due Process of law?

If this case were a simple dismissal under Rule 12, there may not be a right to discovery. However, this was a summary judgement dismissal for want of jurisdiction It in no way classified the petitioners complaint as frivolous as this court has found to be required. In *Haag v McDougal*, *102 S. Ct. 700, 701*, the court found that if the plaintiff was able to pass the first stages of defense, i. e. the

court having jurisdiction and there being a claim upon which to grant relief, the court could, after full hearing and discovery, if the case proved to have no valid basis, dismiss the case as being frivolous.

In this frame or context, the dismissal would in effect be for want of jurisdiction based upon the merritts of the allegations. Where this process is to take place, the courts have consistantly held that where a dismissal for want of jurisdiction is to be tied to the merrits of the allegations, the party oposing such dismisal must be accorded oppor

-tunity to discovery. *Bell v Hood, 327 U S. 678, 1946; Gordon v National Youth Work Alliance, 675 F. 2d 356, D C cir., 1982; Martinez v Hospitale Prespeterianodela Comunidad Inc., 806 F. 2d 1128, 1132, 1st cir. 1986; Kamon v American Telephone & Telegraph Co., 791 F. 2d 1006, 1011, 2nd cir. 1986; Adams v Bain, 697 F. 2d 1213, 4th cir. 1982; Stewart v R C A. Corp., 790 F. 2d 624, 629, 7th cir. 1986; Timberlane Lumber Co., Inc v General Telephone and Electron -ics Corp., 594 F. 2d 730, 9th cir. 1979.*

In fact, the District Court for the Eastern District of Pennsylvania, relying on *Bell Supra* found in *Miller v U S., 530*

F. Supp. 611:

> In considering a motion to dismiss for want of subject matter jurisdiction, it may weigh the evidence to determine if it has jurisdiction, but Fundamental fairness requires the non-moving party be afforded opportunity to conduct discovery so that he can, if possible, meet his burden of establishing jurisdiction

This same principle of due process was utilized in the 3rd, 5th, 6th and 9th circuits in relying on *Insurance Corp. of Ireland SUPRA* where the courts found respectively:

A dismissal for want of jurisdiction without according the non-moving party a hearing on the merritts is error. *Hueblein Inc. v Gen Cinema Corp., 722 F. 2d 29, 34, 3rd cir. 1983.*

Due process of law requires that a party be afforded opportunity to conduct discovery to attempt to defend his position if he can *DeNelo v Toche Marine, Inc., 711 F. 2d 1260, 1263, 1270, 5th cir. 1983; White Motor Corp. v Citibank N.A., 704 F. 2d 254, 258, 6th cir., 1983; Wyle v R. J. Reynolds Industries, Inc., 709 F. 2d 585, 591, 9th cir. 1983.*

The petitioners asked for a right to be heard on the record to present evidence and was denied. They asked for a right to stay to complete discovery and they were denied. How can due process of law be had in such circumstances? How can any person defend a case he is being denied the rights the law requires to be provided to him to so defend? App. @47-55 & 161.

Even this court found in *Harlow v Fitzgerald, 457 U.S. 800, 1982:*

Summary Judgement should not be grant-ed unless discovery proves there are no genuine issues of fact.[7]

(C) Should the court have permitted the petitioners a right to leave to amend? or Can such a motion be made by objecting to a motion for summary Judgement?

As the court can see, the petitioners were denied the right to leave to amend in the interest of justice. The third cir-cuit has consistantly held that where a court is going to dismiss for want of

7. At this point, the arguments now turn to wether any significant facts exist or that should have been permitted to be explored, or whether a stay should have been granted to provide this pro se person time to transcribe his electronic recordings since a hearing/oral argument was denied. These things will be discussed in part D below.

Jurisdiction or for lack of specificity, it must grant the plaintiff opportunity to amend. *Colburn v Upper Darby Twp., 838 F. 2d 663, 1988; Ross v Meagon, 638 F. 2d 646, 1981; Rotolo v Boro of Charleroi, 532 F. 2d 920, 1977; Kaufmann v Moss, 420 F. 2d 1276, 1970; and Negrich v Hohn, 379 F. 2d 213, 1967.*

In fact, in *Colburn SUPRA* the Court found that once a matter is dismissed, the right to amend is lost/denied and the parties only option is to then request leave to amend. They also found that is a party raises the question of leave to amend in response to a motion,

it is not a fatal flaw because of any failure to file a seperate motion *Id @ 666.* If, however, jurisdiction generally ex-isted over the subject as admitted by the Court of appeals in D. C. and by a dismissal of the State on immuity principles, should not leave to amend to correct the conspiracy allegation defects have been permitted rather than dismissal? The 3rd cir. relied on *Foman v Davis, 371 U.S. 178, 1962.* Or, should not discovery have been permitted on this topic to allow the petitioners opportunity to try and defend this position?

Also, the third circuit has consistant

-ly held, in relying on *Insurance Corp. of Ireland SUPRA* That the court must dis-miss for want of subject-matter jurisdic-diction on its own and may never ad-dress such a dismissal on motion for sum-mary Judgement. *Solomon v Solomon, 516 F. 2d 1018, 1975; Trent Realty v 1st Fed. Sav. & Loan Ass. of Phila., 657 F. 2d 29, 1981; and Cospisito v Califano, 89 F. R. D. 374, 1981 See also International Ladies Garment Union v Donovan, 722 F. 2d 795, 806, D. C. cir. 1983; Gayda v Lot Polish Airlines, 704 F. 2d 12, 15, 1st cir. 1983; Fuente v Gen El. Co-Op, Inc., 703 F. 2d 63, 64, 3rd cir. 1983; Kendal v Overseas Devel-*

opement Corp., 700 F.2d 535, 538, 9th cir. 1983.[8] "Subject matter jurisdiction" dis-missals must be made by the court's own motion and is not a matter for summary judgement. Virtually all circuits have held this point true except in this case.

(D) Has the court abused its discretion in dismissing this matter when the petitioner has alleged fraud in obtaining the state court order has properly alleged facts for conspir-

8. The lower court found that the petitioners failed to state any matter over which the court could take cognizance of. According to Kendal v U.S., 12 Pet. 524, 622, cognizance is defined as the power/jurisdiction/ authority of a court to hear a matter. App. @37.

acy and has the right to declare the rights of any person for protec-tions purpose including wether or not a state court order may be valid-ly enforced?

This court has held that when challenging the validity of an order based upon lack of jurisdiction or because of a fraud in obtaining the order, they are one in the same arguments and if either are proven, the order is not voidable, but simply moot because you cannot void that which is allready invalid. *Whitman v Thompson, 18 Wall 457, 467-469, cited in Insurance Corp. of Ireland SUPRA @ 2103*

In this case, the petitioners alleged that the order of 7/2/87 was not only rubber stamped as filed by Mrs. Reardon or a friend, but that the Judge's signature was a rubber stamp signature and that the judge knew nothing of this matter till the morning of the 7/14/87 hear-ing, and nor did the petitioners till approximately 1/14/88. If this is the case, then Mr. Reardon was brought into court on a fraud and upon an entirely false order. If this is the case, *Whitman SUPRA* found that it does not matter what transpired in the proceedings as the act that brought it there was a Fraud. Since

the petitioners tried to obtain a rehear -ing in the state, by filing a motion in Oct. 1987and this was denied, the petition -ers rights of association, society, and of love, company and companionship have and continue to be denied by this fraud. see *Kelson v Springfield, 767 F 2d 651, 9th cir 1985.* To say the least.

Also, this court found in *Ex Parte Young, 28 S. Ct. 441, 455, 1928,* that the pow- er of the court to here a matter is de- rived by the standing/ability of the per -son to bring such a matter to the court . If the 7/2/87 order was not signed by Judge Miller because he was hearing no

matters that day, and on 7/14/87 the judge was then presented this matter that he knew he did not hear and sign, he of neces -sity had to know of the wrong and had to have willfully sanctioned it or acqui -esced to it. (See App. @ 29.) This then is willfull participation by the state in a criminal wrong and amounts to state action and action under color of law by necessity. This is not mere innocent wrong of the judge making a ruling on a matter properly brought before him, this is intent to sanction and participate in such conduct. This is far from the "alle- gation of a dis-gruntled losing party"

as the court has termed it.

If then there was a conspiracy to accomplish this, then the private actors could be found accountable under *Lugar, Addickes or Civil Rights Cases SUPRA or Dennis v Sparks, 101 S. Ct. 188.* The facts in this case should have been clear to the court.

The petitioner concluded from these facts that there was a conspiracy and concerted effort to deny the equal protections of the law, to deny them their rights to each other and to deny due pro cess of law. The court took a different view on the grounds that it failed to

consider all allegations. This may have come in part due to the fact that on July 26, 1989, the petitioner and a friend learned that this 60 page affdidavit of specific facts in opposition to dismiss was not in the docket for either 88-782 or 87-3605 even though the petitioner has a marked copy reading received. (see App. @141)

In making it decision then, the court has ignored the criteria set by this court in *Addickes SUPRA*. In that case the court found that where a significant question such as why was the officer there throughout the entire incident pre

-vented summary judgement and that the jury and not the judge should try this issue as to the proofs. If there was no conspiracy in this matter why do the following questions persist without reso lution

1. Why did the lower court refuse to require the defendants to provide a copy of the state order that complies with Art. IV(A) Sec. 1, and 28 U. S. C. 1738? and Why did the defendants refuse to provide the court or the petitioner with such a copy? Is it because this would then create a controvercy between what the judge and the clerk have now attested to

as oposed to the electronic recordings in petitioners possession?

2. Why did Dr. Goldstein submit a hear-sey letter that was deliberately mislead -ing and then refuse to testify to such?

3. Why did Mr. Costa agree to submitt papers he knew or should have known were false & misleading?

4. Why were the respondents in a pri-vate Ex Parte Conference with the judge prior to the hearing?

5. Who signed the 7/2/87 "Rubber Stamp -ed" order since the court heard no matters on that day?

6. Why did Mrs. Reardon look to the

judge for guidance instead of her attorn -ey? and Why did this Judge provide said guidance in the form of a hand gesture? (App. @74(E))

7. Who ordered the armed gaurds into the court room and to move in on the petitioner?

8. Why did the court and parties do everything they could to ensure the matter was set up one sided? [9]

In this case the court has examined

9. because of the complexity of this case, and the extent of the facts, it is impractical to list every fact and every possible question of importance. Further, App. @ 142 demonstrates the pre disposition of the lower court to rule. In Case #88-5571--also before

only the complaint and without benefit of the missing 60 page affidavit. For the facts are far more numerous than the court has claimed and the majority of these facts are somehow missing from the dockets of these matters. If this case did not involve Federal Issue questions the petitioners would not disagree with its reliance on *Rosquist v Jarret SUPRA*. But the case law in all circuits clearly indicate the rights requested by the petitioner should have been granted and

Judge Thompson, her initial dismissal order is identical to these petitioners and was also so dismissed without prior notice, leave to amend, hearing, or rights to discovery.

were not. With the above questions in existance and the failures on the part of the lower courts, they have in fact aodpted a position regarding state proceedings which is contrary to the *Thompson* Court, *Id.* @467-469 on fraud and jurisdiction and thus has applied Art. IV in a fashion not contemplated by its intent and so specified by the *Thompson* Court as well. At minimum, given 28 U. S. C. 1738 the petitioners should have been permitted to require a conformed copy of the order.

3](A): Was there state action or under color of law action in these

matters?

There are four possible avenues with to bring private parties into Federal Court. According to the Cases of *Addickes and Dennis SUPRA*, a Federal Court could acquire jurisdiction over said parties if a conspiracy was involved. This court further found in *Civil Rights Cases SUPRA*, if a state or any of its agents somehow sanction the private wrong doing of the individual, then again their is state action and in *Lugar SUPRA*, this court found that where a state or its agents lend their authority to the private person or the private person acts

under color of some state statute that the private wrong now becomes the wrong of the state and again there is state ac -tion or action under color of law which are synonomous terms. See *Lugar SUPRA* pe- tion of certiorari, their Appendix B.

As the court has consistantly noted, if private parties conspire with state officials there is action under color of law/state action In this case, the court has found that it has jurisdiction over the subject-matter to grant immunity to the state officials, and then has set out to alter the very intent of conspiracy claims by then ruling that once the

state officials are no longer party to the matter, that it is then dealing with "purely private acts". Once reaching this point, it then claims it has no jurisdiction over such acts and begins to rule that without a subject to have jurisdiction over, the concerted wrongs do not amount to a conspiracy. To prove this she cites the case of *Rosquist v Jarret, 570 F. Supp. 1206, 1211 (D. N J. 1983)* However, in that case the court first found that there were no constitutional rights involved before it reached the conclusion it did on conspiracy. In this case, we have the Court of appeals admitting the

"numerous allegations of violations of Constitutional and Statuatory Rights", and we have the lower courts admitting jurisdiction at least to grant the state officials immunity. Therefore, there are rights involved for which the court had jurisdiction over. Once this threshhold was accomplished, the questions raised in *Addickes and Dennis SUPRA* become control -ling and the court has ignored these cases. It is true that it does cite *Dennis SUPRA*, but after citing it, it then goes on to conclude that the conspiracy allegations are insubstantial because the court lacks jurisdiction and the al-

legations thus made do not support conspiracy. This position runs contrary to the well settled law that a pro se party is to be given every consideration, *Haines SUPRA*, cited by the D. C. Court of appeals in *Reardon et al v Reardon et al*, *#88-7083* It runs contrary to the well settled law that all allegations must be taken as true, *Boag v McDougal, 102 S. Ct. 700* and it alters the intent of *Addickes SUPRA* and the right of the jury to hear all questions of fact and for summary judgement when significant issues exist, and that the court may not consider the evidence or testimony of the defendants

over that of the plaintiff. The questions presented under Point 2(D) above clearly raise significant questions of fact as applied to the law. And, as the court found, such a circumstance precludes summary judgement. However, the distinguishment should be made that in both *Addick-es and Boag SUPRA*, the plaintiff was afforded a hearing and discovery or the court was required to provide such to the plaintiff and in this case the court has failed to provide any of the rights associated with such dismissals to these petitioners. These are not mere mis-applications of the law and/or facts to the

law, these are intentional mis-applications of the laws by intentionally ignoring the facts due to the courts predisposition to rule, and not just in these petitioners' cases.[10]

The criteria in *Civil Rights Cases &*

10. First, the petitioner Mr. Reardon admitts that it may possibly be error on the part of the court regarding not citing all the facts due to the fact that on 7/26/89 a check of the dockets of 87-3605 and 88-0782 revealed that the 60 page affidavit of specific facts received by the clerk Mr. Walsh, see app. @163, was nowhere to be found in either docket. WHY?, and how can a court order therefore be valid if the court has not considered all the allegations to the complaint because they were not placed into the file for review? However, the petitioner is inclined to believe this decision and failure to docket this 60 page affidavit is intentional. See ft. nt. 8 above.

Lugar SUPRA is clear in its intent and the lower court has failed to conform failed to conform to it. This criteria held that if a state official/agent commits either of these two acts, the private wrong is now a public wrong. Of course it cannot be mere disgust on the part of the losing party. Here, the charge was that as per an electronic recording with Judge Miller's staff--people with first hand personal knowledge of the cir

She failed to inform the plaintiffs in that case she intended to dismiss the matter and the reason thereof . This indicates an appearance of prejudice/pre-disposition to rule and effects the appearance of justice. Offut v U. S. 348 U. S. 11, 13-15, 1954.

-cumstances--Judge Miller did not sign the 7/2/87 order and that because such signature was rubber stamped, this presented circumstantial evidence/fact that warranted further investigation as per the requirements of Art. IV and 28 U. S. C. 1738 and warranted "favorable inference" to be granted to the petitioners. If the state judge heard no matters on that day he could not have "rubber stamped the order" and therefore could not have known about the matter as alleged. This then constitutes a fraud on the part of Mrs. Reardon as alleged, it constitutes the existance of a fraudulent order, it

constitutes the sanctioning of a private wrong by a state official, it constitutes the lending of authority to ensure the proceedings came out in a certain fashion, and considering all the wrongs that were done and alleged, it must of necessity also constitute concerted effort to ensure the results.[11]

The same is true for case 87-3605. If the state case law and rules of court court are that a clerk may issue a war-

11. Conspiracy is defined as a joint effort to accomplish an illegal act by legal means or a legal act by legal means. And, considering there are federal issues involved, if the results sought/anticipated by the wrong doer was accomplished, then there is injury and the loss of the rights through this effort which is

rant only if one of the warrant madating criteria is present, and that such affidavit must be taken by the clerk and not the officer, and that the officer is aware of the "domestic violence law criteria" and is shown an outdated order, this too constitutes more than mere using of state process.

As to the issue of a private person acting under color of some state statute or one who performs a Public Function In the State of New Jersey, there are but two classes of person authorized to make certifcation of truthfullness of any doc

the very essence of federal jurisdiction in conspiracy cases. see instruction to jury in such cases.

-ument or affidavit for use in court for proof of a claim They are Attorneys--including prosecutors, the Attorney General and Deputy Attorney Generals--and "NOTARY PUBLICS". According to *Pierson SUPRA citing Ex Parte Virginia, 100 U.S. 369,* any act which may be performed by more than one "person", is of necessity administrative in nature. In this case the petitioners alleged that the respondent Costa, Esq. agreed to place his name to falsified affidavits, and misleading papers. In performing this act he performed an administrative function And carried it out through an illegal act. (i. e. the

fraudulent act of ommittion in withhold -ing from the court the papers were in fact deliberately false and misleading.) Given further that *Thompson SUPRA @ 467 -469* found that where a fraud is alleged in obtaining the order that the order is moot. Here, the fraud by the attorney in presenting the papers and that of Mrs. Reardon in "rubber stamping the order". This is not like the circumstances ruled on in *Polk Co. v Dodson, 454 U.S. 312, 1981* where the allegations involved the attorneys representation of a party or his client. This involves actions which are administrative in nature, which may be

performed only by licensed people--i. e. both N. J. and Pa. prevent any person from acting as counsel for another person because they are not "attorneys", and which require forthrightness and honesty to the court. [12]

No person is permitted to violate the law, as this is precisely what grants the courts power to then hear a case for injury. The petitioners did not raise issue

12. See items 7 & 8 of statutes/provisions involved. al-so, the American Jurisprudence manual holds that an attorneys first duty is to justice, his second is to the court and his third is to the client. In N. J. the courts have held that an attorney who knowingly permits his client to commit a fraud upon the court is guilty of contempt. Also, rules of ethical conduct pre-

with Mr. Costa's discretionary power. They raised issue with the right of the attorney to participate in illegal activity of his client or to carry out such acts himself. The court has ignored these differences and have failed to deal with this issue as it pertains to state action/action under color of law.

Given further that more than 80 fathers are waiting to see the results of this case, *Sanders v Sanders In Camden, Baumgarner v Warth in Trenton, and now, Auger v Auger* just filed in Camden, and

vent an attorney from failing to dislose any information or participating in or permitting his client to participate in illegal activity. Rules 3.1, 3.3 and 3.4.

all of these fathers have complained of the same/similar problems and the Jersey courts are not listening. Where are they to turn to enforce their rights and have them protected. *See Alma Motors v Timkin Co. 329 U.S. 129, 139.*

CONCLUSIONS

For all the forgoing reasons, the lower court orders should be set aside and the case remanded for proper treatment and further proceedings.

I hereby certify under oath and penal-ty of perjury that the forgoing statements of fact are true and accurate to the best of my knowledge and belief.

September 9, 1989

John E. Reardon

JOHN E. REARDON FOR
The Petitioners.

APPENDIX

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ITEM **PAGE**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 89-5035

John E. Reardon

vs.

Virginia Reardon, Sgt. T. Smarzyaski, Voorhees Police Dept., Voorhees Twp., Judge Keiko, The Runnemede Police Dept., The Boro/Twp. of Runnemede, Ptlmn C. Vancamp and Ann Cara.

D. C. Civil No. 87-3605

John E. Reardon, Judith A. & John J. Reardon

vs.

Virginia Reardon, David C. Epler, Judge Scarduzio, Judge Miller, Judge Natal, County of Camden, The Court system, Marshal Gordon, Dr. Goldstein, Mr. Costa and any yet unknown person or agency.

D. C. Civil No. 88-782

John E. Reardon, John J. Reardon and Judith A. Reardon

Appellants

Appeal from the United States District Court

for the District of New Jersey

(Trenton)

District Judge: Honorable Anne E. E. Thompson

Submitted

May 10, 1989

Before: Mansmann, Hutchison and Van Dusen,

Circuit Judges

JUDGEMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgement of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

Circuit Judge: Carol Los Mansmann

Attest: _____

Sally Mrvos, clerk

May 19, 1989

Costs taxed in favor of Voorhees Township, et al appellees as follows:

TOTAL OF BRIEF..... $151.96

Costs taxed in favor of Dr. Marshal Gordon, appellee as follows:

TOTAL OF BRIEF..... $193.00

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NO. 89-5035

John E. Reardon, et al,

Appellants,

vs.

Virginia Reardon, etc.

SUR PETITION FOR REHEARING

PRESENT: Gibbons, Chief Judge, Higginbotham, Sloviter, Becker, Strapleton, Mansmann, Greenberg, Hutchinson, Scirica, Cowen, Nygaard, and Van Dusen, Circuit Judges.

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

Filed: June 19, 1989 BY THE COURT

CAROL LOS MANSMANN, CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 89-5035

John E. Reardon

vs

Virginia Reardon, et al

Trenton N. J. D. C.

No. 87-3605

John E. Reardon, et al

vs

Virginia Reardon, et al

Trenton N. J. D. C.

No. 88-782

John E. Reardon, John J. Reardon and Judith A. Reardon, Appellants

Present: Mansmann, Hutchinson and Van Dusen, Circuit Judges.

Motion by appellants for an order Barring the Appellees from Answering/Respond

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8 ing/Participating in this Appeal for

-ing/Participating in this Appeal for failure to comply with Rule 9 of the Rules of this Court;

To decide the Matter on Appellant's Brief Only;

And to Set aside the Matter for decision Only after the U. S. Supreme Court has decided the Petition for Re-Hearing in case 88-894;

Copy of Clerk's Order dated April 13, 1989 sent for the information of the court.

Deputy Clerk 7-5019

ORDER

The forgoing motion is denied
Dated: July 5, 1989 By the Court,

Carol Los Mansmann-Circuit Judge

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOHN E. REARDON Plaintiffs, v VIRGINIA REARDON, et al Defendants.	: Civil No. 87-3605 (AET) OPINION
JOHN E. REARDON, et al Plaintiffs, v VIRGINIA REARDON, et al Defendants.	: Civil No. 88-782 (AET)

THOMPSON, District Judge

This matters comes before the court on motions filed by various defendants in these two actions to consolidate the

cases and to dismiss the complaints on a variety of grounds. Both complaints deal with alleged deprivations of feder -al rights which plaintiff, John E. Rear- don, contends he has suffered in a con- tinueing series of court proceedings he has had with his wife following their divorce in July 1984. Since their divorce , plaintiff has filed a successive number of federal lawsuits against his former wife, various private citizens, judges, and state officials and agengencies chal -lenging the procedure and results ob- tained in state actions involving his di -vorce, child custody and other related

matters. A brief review of several of these actions provides a context in which to consider plaintiff's current lawsuits before this court.

For example, in March 1985, Judge Stanley S. Brotman of this district consolidated and diposed of three complaints filed by Mr. Reardon which alleged that his wife, various judges, attorneys, and other private and state actors has conspired to deprive him of his federal rights in his original divorce action, appeal and subsequent disposition of marital property. (see Civ. Nos. 84-3696, 84-5203, 85-97, Opinion dated March 20,

1985). Judge Brotman observed that "[p]laintiff has brought claims against nearly every private citizen and public official having some connection to his [matrimonial] proceedings." Id. at 10. Judge Brotman found that none of the plaintiff's "voluminous submissions" had alleged any substantial claims upon which relief could be granted and dismissed the consolidated complaints.

Subsequently, plaintiff filed several new federal actions, two of which were considered by Judge Joseph H. Rodriguez of this district in December 1987. (See Civ. Nos. 86-408, 87-2823, Opinion dated

December 22, 1987.) In Civil No. 86-408 plaintiff filed suit against his wife and various state officials apparently challenging the educational classification of his son. As Judge Rodriguez recounts, while Civil No. 86-408 was pending, Virginia Reardon applied to the Superior Court in Camden County for an order enjoining plaintiff from coming into contact with the children because of her alleged fear for their safety. The honorable John Miller, J.S.C., signed the temporary restraining order on July 2, 1987.[1] On July 21, 1987, plaintiff

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1. Judge Rodriguez indicates that plaintiff also filed

Filed Civil No. 87-2823 against his wife , Judge Miller, and others. Plaintiff appar -ently alleged various perceived propri- eties in the matter before Judge Miller including that "the state does not have jurisdiction or authority over the child -ren and is in fact holding them captive against their will." Id. at 5. After con -solidation the two actions before him, Judge Rodriguez dismissed all claims.

Apparently, Mr. Reardon's difficulties in the state courts concerning his matri

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an action against Judge Brotman and others in Civil No. 85-3560 raising many of the same allegations as Civil No. 86-408 and which was stayed pending the results in Civil No. 86-408.

-monial and child custody concerns have continued, as has his attempts to seek redress in the federal courts for his perceived deprivations. Following a plea -nary hearing held on July 14, 1987, Judge Miller by order dated August 17, 1988, continued the restraints against Mr. Reardon and ordered that he seek evaluation and counseling with a doctor, after which the court would consider whether the restraints should be modi- fied. In her affidavit submitted in Civ -il No. 87-3506, Mrs. Reardon alleges that Mr. Reardon approached her and the children on August 15,1988 and that on

August 17 she also signed a complaint at the Voorhees Police Department based upon his alleged violation of Judge Miller's court order. Defendants in Civil No. 88-782 indicate that the charges ultimately were dropped, but that in October 1987 plaintiff was found to be in contempt by Judge Scarduzio for violating the prior orders of judge Miller. Plaintiff filed several federal actions in response to these events, two of which are now before the court.

In Civil No. 87-3605, filed in September 1987, plaintiff charged his wife, various police departments and officers,

and Judge David Keyko had all violated plaintiff's rights concerning the incidents surrounding the aforementioned com-plaint filed by Mrs. Reardon in August 1987 at the Voorhees Police Department. By Memorandsum and order dated June 1988, the court granted summary judgement to all defendants in the case except Mrs. Reardon and Judge Keyko, neither of whom had moved for summary judgement at the time. In short, Mr. Reardon's complaint in 87-3605 against his ex-wife seems to be that she should not have filed the com-plaint in August because she should have known that Judge Miller's prior restrain

ing order was invalid. As to Judge Keyko, plaintiff complains that the judge "dem onstrates an irrationally improper, and abnormal behavior which is psychotic," and in the plaintiff's opinion is "unfit to sit on the bench in any court or state." Mr. Reardon also chareges that Judge Keyko was biased against him because Mrs. Reardon worked in Camden - County Courthouse and "in all liklihood has a cordial and friendly relationship with this judge." Plaintiff states that the only relief he seeks against Judge Keyko "currently" is that the judge be barred from sitting on any matter in

which he is involved.

In civ. No 88-782, filed in this court in February 1988, Mr. Reardon continues his attack on his wife, her attorney, various judges, the Camden County Court system, and several private citizens, all of whom plaintiff continues to believe have conspired to deprive him of his rights. The court has reviewed carefully plaintiff's lengthy and somewhat unfocus-ed complaint. In particular, plaintiff appears to be most troubled by the afore-mentioned decisions by Judge Miller in the summer of 1987 concerning plaintiff's visitation of the children and the

subsequent efforts by Mrs. Reardon to en-force these restraints in the fall of that year. In Count 1, entitled "Extortion", plaintiff recounts his collected criticism of these events. He begins by alleging that in June of 1987, Mrs. Rear-don, her attorney, Mr. Costa, and a psy-chiatrist, Dr. Goldstein, conspired to file false affidavits in order to deprive plaintiff of his parental rights. He noted that Dr. Goldstein was warned to "stay out of the matter all together [sic] or he would be sued." Plaintiff then contends that during the judicial hearing in July (presumably the order to

show cause before Judge Miller), proper proceedings were not followed. He provides little more than conclusory unsubstantiated allegations concerning this charge, such that he was forced to testi-fy against himself, that Mrs. Reardon failed to carry her burden of proof, and that the court lacked jurisdiction and was a "kangaroo court". He claims that Mrs. Reardon and Mr. Costa have continued to seek enforcement of this "unconstitutional" order of Judge Miller and that Judge Scarduzio has "extroted" plaintiff's compliance therewith. He con-tinues that the state has "manipulated"

matters by allowing "non-tenured" judges to be assigned to his cases and that the judges have acted outside their authority and are "flaunting" their power. Finally, at the conclsion of Count 1 he again appears to raise the issue, dealt with by judge Rodriguez in Civil No. 86-408, concerning the educational placement of his son

Count 2 of the complaint largely contains the same general allegations of various perceived wrongs suffered by Mr. Reardon in the state court during this period of time. He also adds a criticism that courts favor "motherhood" and that

the term "best interest of the child" is a "fraud" and is used by judges to discriminate against fathers. He also claims that the state courts unlawfully "seized" control of his case because he had already filed a suit in federal court; amd that therefore, his October 23, 1987 contempt citation by Judge Scarduzio is invalid. [2]

Finally, in Counts 4-9, the plaintiff

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2. the court notes that plaintiff has entitled count 2 "18 U.S.C. 241". However, this statute is part of the criminal code, and there is no basis to find that it would provide plaintiff with a private cause of action therefore, apart from the reasons set forth in the remainder of this opinion, Count 2 should be dismissed on this basis alone.

continues his attack raising the same challenges as those specified above, but under different headings including "Right to Associate", "Redress of Griev-ance", and "Cruel and Unusual punish-ment" among others. [3]

The court first will address defend-ants' motion to consolidate these two actions. under Fed. R. Civ. P. 42 (a), in its discretion, the court may consolidate two or more pending actions when they in

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3. Count 7 entitled "Peonage" raises a rather unique and curious claim wherein plaintiff argues that New Jersey has placed men in a state of peonage by forc-ing them to support their children while refusing to give the custody and control over the children

-volve common questions of law or fact. Both actions have Been brought by plaintiff against his ex-wife and various state court judges and others concerning his treatment by the courts. The time frame of both suits appear to be primar -ily the summer and fall of 1987. Therefore, the court finds that consolidation of Civil Nos. 87-3605 and 88-782 would avoid unnecessary cost to all sides and will so order.

The court next will consider plaintiff's claims against the various judges who have had various contacts with his cases in state court. First, as to Judge

Keyko who is the only judge named in 87-3605, the court notes that the only relief plaintiff seeks "currently" is that Judge Keyko not be permitted to sit on any matters involving plaintiff. As a preliminary matter the court sees no basis in the allegations raised by plaintiff which by any stretch of the imagination, would warrant recusal of the judge. Moreover, not only is no case apparently pending before Judge Keyko involving Mr. Reardon, but a federal district court would have no jurisdiction to order the recusal of a state court judge.

In Civil No. 88-782, plaintiff has nam -ed several judges including Judge Mill- er and Judge Scarduzio, and seeks mone- monetary damages from them as well as their removal, it would appear. However, it is well-established that in actions seeking damages, judges are entitled to absolute immunity. Stump v Sparkman, 435 U. S. 349 (1978). Plaintiff has set forth no facts to show that these judges were without jurisdiction or engaged in acti -vities which were not "judicial acts". All were empowered to hear the hear the matters presented to them and rendered decisions which they were authorized to

make. Therefore, they are entitled to absolute immunity. Id. at 360. Moreover, as was true with Judge Keyko, despite plaintiff's conclusory allegations, nothing in his voluminous pleadings and submissions would suggest in any way that the conduct of these judges was improper. Therefore, the court finds that the claims against the various judges are all subject to dismissal.

The court will turn next to plaintiff's claim against the "County of Camden" and the "Court System". Although his allegations in this area are particularly vague and unfocused, plaintiff

appears to seek to hold the county and court system generally liable for his alleged improrper treatment by the judges before whom he has appeared. However, even if his claims against these judges were meritorious, his claims against Camden County and the Court Sys-tem must fail. Under 42 U. S. C. 1983, a plaintiff must allege and prove a particular defendant knowingly violated his rights or acquiesced in such a violation by a subordinate. Vicarious liability will not support a section 1983 claim Hampton v Holmesburg Prison officials, 546 F. 2d 1077, 1082 (3rd cir.

1982.) Even if plaintiff could show some-how that either the court or the courts were "responsible" for the judges, he has failed to set forth any facts to make out a section 1983 claim against them In addition, to the extent that plaintiff's amorphous claims against these two de-fendants are a challenge to the particular clerks who implimented the orders of the various courts, his actions would also be barred. Lockhart v Hoenstine, 411 411 F. 2d 455, 460 (3rd cir.), cert. denied 396 U.S. 941 (1969).

Similarly, plaintiff's claim in Count 2 that the state courts "illegally seiz-

ed control" over his cases is wholly without merit. The mere fact that plaintiff filed suit against a state judge 20 minutes prior to the return date of an order to show cause does not render the state court's consideration of the matter before it improper. This is particularly true in a situation where the federal suit was dismissed for lack of jurisdiction, as plaintiff acknowledges.

The court will now consider the allegations raised against Mrs. Reardon, Mr. Costa,, her attorney, and the other individual defendants. Plaintiff's complaint regardin private actions of these part-

ies would not be cognizable under 42 U. S. C. 1983. Thus, regardless of how odious Mr. Reardon considers the private actions taken by his ex-wife and others concerning custody of the children, his concerns are not within the subject matter jurisdiction of this court due to the state action requirement of section 1983.

Under Dennis v Sparks, 449 U. S. 24 (1980), an individual may, however, bring charges of conspiracy under 42 U. S. C. 1983 against private persons if he can demonstrate that they have acted in con -cert with state actors. In order to make out such a claim, a plaintiff must show

that the private and public parties have "directed themselves toward... unconstitutional actions by virtue of a mutual understanding or agreement". Rosquist v Jarrat Construction Corp., 570 F. Supp. 1206, 1211 (D. N. J. 1983) Conclusory, unsupprted allegations of such an unlawfull agreement fail to give rise to a claim under this standard. Dennis supra at 28. Also, the mere fact that the federal plaintiff was on the losing side in state court does not entitle him to allege a conspiracy and seek relief against those who sought relief before the state tribunal. Id. at 28-29.

In these actions, plaintiff has failed to provide anything other than his bare, unsupported allegations that his ex-wife and others conspired with any of the judges assigned to his matters. On the contrary, the complaint itself merely indicates that Mrs. Reardon, through her attorney and supported by evidence from Dr. Goldstein and others, sought an order from the court limiting Mr. Reardon's contact with his children due to her apprehension over his behavior. After several orders were entered by Judge Miller during the summer of 1987, the complaint shows that she merely

sought to enforce the restraints which resulted in a contempt finding against Mr. Reardon issued by Judge Scarduzio. There is no basis in the submissions to support plaintiff's conclusion that these judges conspired with Mrs. Reardon and others to deprive him of any of his constitutional rights.[4] On the contrary, plaintiff simply appears to disagree

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4. Plaintiff contends that the judges hearing his cas-es were biased against him because his ex-wife work-ed in the courthouse, and he supposes that "in all lik-lihood she has a cordial and friendly relationship" with the judges. However, as Judge Brotman found when plaintiff raised a similar charge in 84-3496/5203/85-97, this charge of bias is conclusory and without any showing of special treatment. Accordingly, this allega-tion fails to support a colorable claim of conspiracy.

with the outcome of matters before the state courts. There is nothing to indicate that plaintiff was treated unfairly or that he was deprived of any rights during his custody ltigation This court, of course, is without power to review the merits of the decisions reached by these state courts sitting within their jurisdiction In short, plaintiff has chosen the wrong forum to challenge the results in those proceedings.

Finally, as to any additional equal protection or due process challenges con-tained within his complaints, the court would find them to be wholly without

merit and subject to dismissal. His various counts in Civil No. 88-782 all present similar challenges, no matter how the court is labeled or the allegations phrased. As discussed at length above, plaintiff believes he has been unfairly treated, by virtually everyone connected with his custody and matrimonial disputes, from his wife, the the lawyers involved, to the judges assigned to the cas -es. However, no matter how he presents his position, the fact remains that the complaint is completely devoid of any facts which could present a claim cogniz -able in federal court.

December 9, 1988.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOHN E. REARDON Plaintiffs, v VIRGINIA REARDON, et al Defendants.	Civil No. 87-3605 (AET) ORDER
JOHN E. REARDON, et al Plaintiffs, v VIRGINIA REARDON, et al Defendants.	 Civil No. 88-782 (AET)

For the reasons stated in this court's opinion filed even date herewith, it is on this 10th day of December 1988

ORDERED that Civil No. 87-3605 and Civil No. 88-782 be and hereby are consolidated; and it is further

ORDERED that summary judgement be and hereby is granted in favor of all defend-ants and the consolidated action be and hereby is dismissed.

Anne E. Thompson, U. S. D. J.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

JOHN E. REARDON, Plaintiffs, v VIRGINIA REARDON, et al Defendants.	Civil No. 87-3605 (AET) MEMORANDUM AND ORDER
JOHN E. REARDON, et al Plaintiffs, v VIRGINIA REARDON, et al Defendants.	Civil No. 88-782 (AET)

THOMPSON, District Judge

By opinion and order filed December, 1988, this court granted motions by de-

fendants to consolidate and dismiss the above actions. The court found that the complaints filed by plaintiff against his ex-wife, several state court judges , and various public officials and private parties was devoid of any facts which could present a claim cognizable in a federal court. Plaintiff has filed a motion for reconsideration, to amend his complaint, and for other relief. The court has reviewed plaintiff's submissions and finds that he presents no bas -is for relief requested.

Therefore, it is on this 4th day of January 1989,

ORDERED that plaintiff's motion be and hereby is denied.

Anne E. Thompson, U. S. D. J.

		docket No.			filing date			Nature R
district	off.	yr.	number	or	mo.	day	yr.	j	suit 23
0312	1	87	03605	1	09	01	87	3	440

judge	Jury		MDL	Docket
	Mag	demand	ARB Docket	yr. Number
1230	12BC	P	N	87 03605

CAUSE: 42 U. S. C. 1983--Other Civil_Rights

Plaintiffs	**Defendants**
John E. Reardon	Virginia Readon
	all other de-
	fendants removed
	TAG

ATTORNEYS

John E. Reardon, Pro Se

Oakridge Terrace-B33

Runnemede, N. J. 08078

DAG John M. Armstrong

NJ Division of Law

R. J. Hughes Justice Complex

CN-116

Trenton, N. J. 08625

Attrny. for deft. Judge Keyko

(609) 984-2403

FILING FEES PAID

Date	Receipt Number	C. D. Number
9-2-87	$120.00 #91118	
8-24-88	#107337 $105.00	

DATE	NR CIV. #(87-3605)	PROCEEDINGS
9/2/87	1	complaint, filed 9/1/87(jury Demand)
9/2/87		Summons issued on 9/1/87 and returned to plaintiff (pro se) for service, 20 days.
9/2/87	2	Notice of allocation and assignment, filed. (Camden, Rodriguez.)
9/25/87	3	answer of Voorhees defendants, filed 9/21/87. Robert M. Kaplan-attorney.
10/6/87	4	Answer by Runnemede defendants, filed. Maolney and McCafferty-Attorneys.

DATE	NR. CIV. #(87-3605)	PROCEEDINGS
10/9/87	5	Amended answer of Voorhees defendants.
10/19/87	6	Answer by Virginia Reardon, filed 10/16/87.
10/30/87	7	Notice of motion by state for extension of time to plead, filed. ret. 12/18/87
10/30/87	8	certification of John M. Arm-strong, filed.
11/21/87	9	substitution of attorneys for Voorhees defendants, filed.
12/6/87	10	Affidavit by pltf. in response to state defendant

DATE NR. CIV. #(87-3605) PROCEEDINGS

for extension of time, filed 12/30/87.

1/15/88 11 Notice of motion of Voorhees defendants for summary judge-ment, filed 1/14/88. ret. 2/19/88 **ORAl ARGUMENT. Rule 78, AET, 5/16/88.**

1/29/88 12 Notice of motion of Runne-mede defendants for summary judgement, filed. ret. 3/25/88. **Rule 78, AET, 5/16/88.**

1/29/88 13 Affidavit of Steven C. Van-camp, filed.

2/4/88 14 Rebuttal followup to Mr. Kap

DATE	NR. CIV. #(87-3605)	PROCEEDINGS
		-lan' s lettered brief, filed.
2/17/88	15	Notice of Motion by pltf. to stay summary judgement, filed 2/16/88. **Rule 78, AET, 5/16/88.**
2/17/88	16	Affidavit of pltf., filed 2/16/88.
2/23/88	17	order of re-allocation from Camden to trenton, filed, copies to all parties.
3/5/88	18	Notice of motion by pltf. for court to recuse, ret' ble 5/16/88, with statement in lieu of brief, certification

DATE	NR. CIV. #(87-3605)	PROCEEDINGS
		in support., filed 3/31/88 (P. O. Sub.) **Rule 78, AET, 5/16/88.**
2/29/88	19	Notice of motion by state for extentsion of time to plead, ret' ble 6/20/88, filed. (P. O. Sub.) **Rule 78, AET, 6/20/88.**
5/24/88	20	Minutes of hearing on 5/16/88 before Thompson, filed. 5/16/88.
6/9/88	21	Memorandum and order denying plaintiffs motion for recusal, denying pltfs. motion to

DATE	NR. CIV. #(87-3605)	PROCEEDINGS
		delay ruling on summary judgement motions. Motion by defendants for summary judge -ment is granted, filed 6/6/ 88
6/17/88	22	Notice of Motion by pltf. for reconsideration ret' ble 7/18/88, filed. **Rule 78, AET , 6/20/88**
6/20/88	23	Minutes of hearing before Judge Thompson, filed 6/20/ 88.
7/8/88	24	Memorandum & order granting motion of state to answer

DATE	NR. CIV. #(87-3605)	PROCEEDINGS
		within 15 days of receipt of this order filed 7/1/88.
7/18/88	25	Minutes of hearing of 7/18/88 before Judge Thompson, filed.
8/2/88	26	Memorandum and order denying pltfs. motions for reconsideration, filed 7/21/88.
8/4/88	27	Answer by state, filed 7/22/88.
8/23/88	28	Notice of motion by defnt. Reardon to consolifdate action with CV 88-782, to dismiss all actions against

DATE	NR.	CIV. #(87-3605) PROCEEDINGS
		defts., etc. ret' ble 9/15/88 filed 8/22/88.
8/24/88	29	Notice of appeal by pltf. of order of 7/21/88 fld. 8/23/88. copies to all counsel of record.
8/24/88		Record submitted to USCA for purposes of Appeal.
9/2/88	30	Notice of motion by State to consolidate this action with CV 88-782, and for summary judgement ret' ble 10/17/88, filed, 8/25/88.
9/12/88	31	Notice of Motion by pltf.

DATE	NR.	CIV. #(87-3605) PROCEEDINGS
		for leave to stay court's actions, accept answers as timely and/or postpone hearing date and pre-trial conference date with affidavit, filed 9/6/88.
9/21/88	32	Transcript purchase order, filed 9/13/88. (none requested)
9/21/88		**RECORD COMPLETE FOR PURPOSES OF APPEAL. (PARTIES NOTIFIED)**
11/18/88	33	Cert. copy of order of USCA dismissing appeal due to a

DATE NR. CIV. #(87-3605) PROCEEDINGS

jurisdictional defect, filed 10/17/88.

11/22/88 34 Copy of minutes of 10/17/88, filed 10/17/88. (see #28 & 30 above)(AET)(Rule 78)

12/13/88 35 Copy of opinion and order consolidating Civil No. 87-3605 and Civil No. 88-782 and order granting summary judgement of all defts., the consolidated actoin is dismissed, filed. (AET) in favor (NM).

12/27/88 36 Notice of motion of pltf. of

DATE NR. CIV. #(87-3605) PROCEEDINGS

reconsideration, leave to amend & Answer unadressed is -sues, ret' ble 1/17/89, fld. 12/23/88.

1/6/89 37 Memorandum order denying pltf' s motion of reconsideration, filed 1/5/89. (AET)(NM)

	docket No.			filing date			Nature R
district off.	yr.	number	or	mo.	day	yr.	j suit 23
0312 3	87	00782	1	02	08	87	3 440

judge	Jury	MDL	Docket	
	Mag demand	ARB Docket	yr.	Number
1230	12AB P		87	00782

CAUSE: 42 U. S. C. 1983--Other Civil Rights

Plaintiffs	Defendants
John E. Reardon, Judith A. & John J. Reardon	Virginia Reardon, Dav -id Epler, Judge Na- tal, Judge Scarduzio , Judge Miller, Co. of Camden, The Court system & Marshal Gordon and any yet unknown person or

ATTORNEYS

John E. Reardon,
pro se
Oakridge Terrace-B33
Runnemede, N. J. 08078

John M. Armstrong
Hughes Justice Complex
CN-116
Trenton, N. J. 08625

David M. Goldstein
pro se
214 W. Main St.
Suite 102
Moorestown, N. J.

Ann C. Pearl, Esq.
Ass. County Coun
14th Flr., Crt. Hse
Camden, N. J. 08101
Defentans Reardon
and David C. Epler

41 Grove St.
Haddonfield, N. J.

FILING FEES PAID

Date	Receipt Number	C. D. Number
2-11-88	104729-$120.00	

DATE	NR.	CIV. #(88-782) PROCEEDINGS
2/11/88	1	Complaint filed 2/8/88.
2/11/88	2	Notice of allocation ans assignment, filed.
2/11/88		Summons issues
6/8/88	3	Answer to complaintf by defnt. Goldstein, filed 6/3/88
6/8/88	4	Order shceduling conference for 7/12/88 at 11:00 am, filed. (JWD)
6/16/89	5	Answer by deft. Reardon, filed 6/13/88.
6/16/88	6	Answer by deft. Epler, filed 6/13/88.
6/22/88	7	Objection by pltf. to respnse

DATE	NR.	CIV. #(88-782) PROCEEDINGS
		to complaint, filed.
7/12/88	8	Answer by State defts., filed 7/6/88.
7/12/88	9	Notice of motion by County defts. to dismiss complaint and amended complaint in liue of answer, filed 7/6/88.
8/4/88	10	Letter by deft. Goldstein seeking to join motion to dismiss, filed 7/27/88.
8/9/88	11	Same as #9 above. filed 8/4/88. **Rule 78, AET, 9/15/88.**
8/23/88	*	see item #28 of case 87-3605
9/2/88	**	see item #30 of case 87-3605

DATE	NR	CIV. #(88-782) PROCEEDINGS
9/12/88		Notice of motion by pltf. for leave to stay court's action, accept answers as timely and/or postpone hearing date pre-trial conference date with affidavit, filed 9/6/88.
9/19/88	12	Minutes of hearing of 9/15/88, filed 9/15/88.
10/24/88	13	Minutes of 10/17/88, filed 10/17/88. (see # * & **)(**Rule 79-AET**)
10/27/88	14	Order to Show Cause Why case should not be dismissed, ret'ble 12/7/88 before JWD, filed

DATE	NR.	CIV. #(88-782) PROCEEDINGS
11/3/88	15	certified receipt returned, filed. (see #14 above.)
11/22/88	16	Order amending return date of order to show cause from 12/7/88, to 12/5/88, filed.
12/1/88	17	certified receipt returned, filed. (see #16 above.)
12/9/88	18	Order discharging the Order to show cause ret' ble 12/5/88, filed.
12/13/88	19	Opinion and order concoli-dating Civil No. 87-3605 & Civil No. 88-782 and order granting summary judgement

DATE	NR.	CIV. #(88-782) PROCEEDINGS
		in favor of all defts. and consolidated actions dismissed, filed.
12/15/88	20	Minutes of 12/15/88, filed 12/15/88.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

John E. Reardon, et al	:	
Plaintiffs,	:	C. A. No. 88-0286
v	:	
Virginia Reardon, etal	:	
Defendants.	:	

ORDER

The court having reviewed plaintiff's complaint and application for a temporary restraining order, and it appearing that venue does not lie in this court because the claims arose in New Jersey and all defendants reside there, see 28 U. S. C. sec. 1391, it is this 4th day of

February, 1988,

ORDERED, that plaintiff's application for temporary restraining order is DENIED.

FURTHER ORDERED, that this action is dismissed.

George H. Revercomb, Judge

UNTIED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

NO. 88-7083 **SEPTEMBER TERM, 1988**

C. A. No. 88-0286

John Reardon, and for Judith A.
Reardon and John J. Reardon,

Appellants,

v

Virginia Reardon, et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Wald, chief judge: Edwards and Williams, circuit judges

JUDGEMENT

This case was considered on the re-
cord on appeal from an order of the Unit
-ed States District Court for the Dis-
trict of Columbia. the court has deter-
mined that the issues presented occasion
no need for a published opinion See D. C.
Rule 14(c). For the reasons stated in the
accompanying memorandum, it is

ORDERED AND ADJUDGED that distict
court's order filed February 4, 1988, sua
sponte dismissing appellant's complaint
for lack of venue, be affirmed in part
and vacated and remanded in part.

the clerk is directed to withhold is
suance of the mandate herein until seven

days after disposition of any timely petition for re-hearing. See D. C. Cir. Rule 15.

PER CURIAM

No. 88-7083-**REARDON V REARDON, ET AL.**

MEMORANDUM

Pro Se appellant John A. Reardon (Rear-don) [1] appeals the district court's order dismissing sua sponte his complaint for lack of venue.

Reardon is a resident of the state of New Jersey as are all appellees. Reardon filed an exhaustive civil complaint in

---

1. Appellant also seeks to represent his minor children, Judith and John J. Reardon.

the district court seeking to obtain a temporary restraining order against three members of the state judiciary and several private citizens. Appellant alleg -es numerous violations of his constitutional and federal statuatory rights. After making a finding of improper venue , the district court sua sponte denied Reardon's motion for a temporary restraining order dismissed the complaint.

In Anger v Revco, 791 F. 2d 956 (D. C. Cir. 1986)(per curiam), this court held that a district court may not sua sponte dismiss a pro se complaint for lack of personal jurisdiction Only a party may

raise these claims as affirmative defenses in responseive pleadings. Fed. R. Civ. 12(b),(h)(1). Improper venue and lack of personal jurisdiction are "threshhold defense[s]" which "absent timely objection" are deemed to be waived by party. Anger, 791 F. 2d at 058. See 28 U. S. C. 1406 (b); Fed. R. Civ. P. Rule 12 (h)(1).

In Anger, the court reasoned that vacatur and remand was proper since due consideration must given to a litigant's pro se status. See Anger, 791 F. 2d at 958. See also Haines v Kerner, 404 U. S. 519. (1972) Moreover, the court noted, a defend -

-ant could fail to raise either defense. If the defense is not affirmatively pleaded, it is waived.

Clearly this court would prefer to have the venue issue aired before the district court. Anger, 791 F. 2d at 958. Here, however, appellees Samuel D. Natal, John L. Miller and Albert J. Scarduzio have raised the venue issue on appeal. therefore, it would serve no purpose to remand this portion of the case to the district court. the same is not true of the appellees whoi failed to file respon -sive pleadings before this court. Accord

-ingly, we remand that portion of the case to the district court for further proceedings consistent with Anger.

AFFIDAVIT

The undersigned parties do hereby attest and affirm the following facts took place on Tuesday morning July 14, 1987 at the Camden Co. Hall of Justice realting to the matter of Reardon v Rear -don

A) The judge did prevent the petition -er--John E. Reardon--from making an appearance on the record.

B) The petitioner was denied by the Judge to place an opening onjection on the record regarding the proceeding and self incrimination in a criminal proceed -ing.

C) the criminal proceeding was domest -ic violence and the judge did require the petitioner to be sworn in and denied him his right to plead the 5th

D) Prior to the hearing, Mrs. Reardon, her counsel and her brother-in-law came from the Judges chambers area.

E) During the hearing and questioning , on at least two occassions, Mrs. Reardon did look to the judge as though looking for guidance or an answer and the judge did make a hand gesture that was slight but noticable.

F) The judge refused to hear the peti -tioners statements that the court lack-

ed jurisdiction due to the cases of Doran, Hicks and Younger which prevents two forums from adressing the same issues and allegations.

G) When this was brought to the courts attention the court responded by saying that "he didn't care what was going on in the other cases", or something to that effect.

H) The court did require the petitioner to testify against himself in a criminal proceeding without counsel.

I) The petitioner did inform the court he was unaware of the specific nature of the action and what he was sup-

posed to be defending himslef against.

J) The judge never asked the petition -er if he had counsel, could afford coun- sel or even wanted counsel.

K) The judge refused to permit the petitioner from challenging the merrits of the plaintiffs allegations and when he did his remarks were they had no bear -ing on the case.

L) The court did proceed in a fashion which required and requires the petition -er to prove the states and Mrs. Reardon 's charges for them

M) Depsite testimony from the plain- tiff--Mrs. Reardon--herself that at no

time in the past five years had the petitioner ever acted in a fashion that she was alleging, nor had she ever had occassion to file a domestic violence complaint or complaint with the Division of Youth and Family services, the court still accepted Mrs. Reardon's allegations as truth and enbtered an order depriving the plaintiff of his rights to custody and the love, affections, company and companionship of his children

N) The judge refused to permit the petitioner to rely on the defense of estoppel and collateral estoppel which bars a party from re-litigating issues

and facts that have been litigated in the past and found insufficient proof to warrant such action as the court took on July 14, 1987.

O) The judge did further permit the plaintiff to make the allegations that the petitioners pending complaints are in fact frivolous, merritlous and specious but more importantly the reliance on said allegations was to try and make the petitioner look psychotic because he believes in fighting for and protecting his rights.

We the undersigned due hereby make these statments under oath of perjury

and realize that these are our observations and perceptions of what was taking place.

Dated: 7/16/87 By: _____
John E. Reardon

_____ By: _____
Notary Public: John DeFerro
William Brennan

8/13/90
My Commisions expires

Attention Miss Knox

C/O Clerks Office

U. S. District Court

P. O. Box 515

Tretnon, N. J.

Dear Miss Knox,

As per our conversation of Aug. 5, 1988 and as per my previous conversation regarding the list of lawyers, Please find enclosed a list of attorneys I would like verification on as to whether or not they are attorneys of record amd authorized to practice in the federal court. Their names are:

Alan Alasken

Theodore M. Costa 12-17-81

Harris Cotton 12-22-58

Dorris Dabrowski 12-6-78

David C. Epler

Robert Eyre

Phil Fuoco 2-7-72

Francis Hartman

Janice Icez

Robert Kaplan +

John Kapp 12-20-84

Michael potter

Davis Reberkenney

John F. Strazzults 6-6-61

Please bill me.

Respectfully,

+ Robert D. Kaplan 9-19-61

Robert J. Kaplan 12-9-86

Robert M. Kaplan 12-18-80

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

OFFICE OF THE CLERK

U. S. P. O. & Courthouse

NEWARK, NEW JERSEY 07101

SEPTEMBER 8, 1988

Reply to: TRENTON

A. Gambone

RD 31 Box 545 Lot D1

Sewell, N. J. 08080

Dear Miss Gambone:

The admission dates are provided for the attrorneys admitted to the U. S. Dis-trict Court of New Jersey.

There is no fee.

Very truly yours,

William T. Walsh, clerk

By: Julia C. Knox

Financial Deputy

U. S. DISTRICT COURT FOR

THE DISTRICT OF N. J.

John E. Reardon, etal:		
Plaintiffs,	:	Civil Case No. 88-782
v	:	
Virginia Reardon, et al	:	Objections to Reardon & Epler
Defendants.	:	

This comes as a formal objection to the response to the above captioned complaint by the defendants Reardon and Epler. This brief then sets oout the reasons and basis for the objections and said objections are as follows.

This court is required should first draw its attention to local rules 4, 6 &

7 of the rules of court regarding attorn
-ey conduct and the American Bar Associ-
ation Rules and Regulations. The plain-
tiff then draws the courts attention to
the case of Bachman v Pertschuck, 437 F.
Supp. 973 (D. D. C. 1977)--for one--found
that where an attorney who is likely to
be called as a witness may not take rep-
resentation of a case for any of the
parties thereto. This case relied on ABA
Rule 3. 7. The basis for this objection is
there is an obvious condlict of interes
. In accordance with the comments of this
rule, it is the responsibility of an advo
-cate to anylize the proofs and a wit-

ness to provide the proofs. Thus, so long as the defendants realize that when Mr. Epler is called as a witness he cannot provide verification or denial of questions, and thus would be in no position to deny the allegations as he canno pro-vide proof, then the plaintiff will accept this arrangement under the knowledge that unless he now provides some means of proof to deny the charges he is open for summary judgement for such posi-tion The plaintiff would demand at the pre-trial conference, if this position is maintained, that sanctions be placed against the defendant Epler regarding

the limiting of his testimony in denying any of the allegations since he cannot so testify and defen at the same time.

If, However, thihs is not agreeable to Mr. Epler, then the plaintiff would then request sanctions be placed against Mrs. Reardon and default be entered against her and/or to limit her denial of the allegations unless she obtained new coun -sel. This, is again requested to comply with justice and proper procedure and un -less Mrs. Reardon has a new attorney at that time, sanctions will be sought against her.

Nontheless, the plaintiff demands that

the parties, prior to the July 12, 1988 pre-trial conference, be required to prove that they have sanctions placed against them The ABA Rule specifically says: (R 3. 7)

> Attorney' s will not take representation of a case where it is likely they will be called as a witness, unless:
>
> 1) The testimony is on uncontested issues.
>
> 2) The testimony relates to the nature and value of the services render -ed. or
>
> 3) It will work a hardship on the cli

-ent if he/she does not represent.

An analysis of these criteria will re-veal the following. First, since there is no AND or OR between items 1 and 2 it must imply that if either of these two items cannot be met, then the attorney will not represent. (i. e. this and that must be done to fullfill the require-ments or it fails.) While the OR be-tween items 2 & 3 implies that if item one is present, and either of 2 & 3 is present then it is proper to represent. (i. e. itmes A and itmes B or C must be met.) The analysis of this case reveals the following, (1) Clearly from the an-

swers proffered by the defendants, there are contested issues to be testified to. Therefore, item 1 cannot be met. Next, (2) reveals that the primary testimony is of the attorney's actions, and whihle there is some testimony which may arise regard-ing the attorney client relationship--such as was it the attorney's idea to send the letter to the Gloucester County Court or did he do it at Mrs. Reardon's request--if he or they chose not to tes-tify on such questions based on the attorney client priviledge, so be it, but knowing that an attorney's first respon-sibility under N.J.S.A. 2A:13-1 & -10 is

to the court and jusitce first and refus -al's to testify hurts them not the plaintiffs. Finally, (3) will reveal that Mrs. Reardon is in a job in which she makes a gross salary in excess of $30, 000.00/yr. and also gets $4,680.00/yr. in child support and thus there can hard -ly be any demonstration of hardship on the defendant Reardon that the plaintiff can see. Nontheless, the plaintiff re- quests proof of the attorney Mr. Epler be -ing able to meet these requirements by 7/12/88 or sanctions will be sought a- gainst one or both of the defendants.

Dated: June 21, 1988 _____

John E. Reardon for the plaintiffs.

U. S. COURT OF APPEALS

FOR THE THIRD CIRCUIT

John E. Reardon, et al:	
Appellants,	Case No. 89-5035
v	
Virginia Reardon, etal:	Petition For Re-Hearing In Banc
Appellees.	

The appellants in the above captioned matter do hereby petition this court for a Re-Hearing In Banc in the above captioned matter on the grounds that the lower court and the appeals court panel has failed to (1) comply with ***STARE DE -CISIS*** criteria, (2) has injected and al -lowed the the lower court judge to in-

ject its personal opinion and point of view of the law regarding ***JURISDICTION*** by re-hearing this issue and entering a ruling contrary to the court of appeals in Washington, D.C. contrary to the criteria of ***Res Adjudicata*** and the Supreme Court decisions on such issues,(3) and for refusing to comply with and enforce the rules of court except in a fashion which is allways prejudicial and injurious to the petitioners.

On February 4,1988 the appellants fil-ed case 88-0286 in the U.S. District Court for the District of Columbia. **(see attached exhibits 1 & 2)**

On the same day, appellants filed a mo -tion for a temporary restraining order.

On the same day, the judge dismissed the complaint for lack of **VENUE.**

Within the time prescribed by stat- utes, the appellants filed a notice of appeal and filed said briefs with the court of appeals due in Washington, D. C. **(see exhibit 3)**

In response to this appeal, the state filed a brief in opposition **(see exhib -it 4)**

In the appellants brif, the appellants did raise the issue of **"SUBJECT MATT- ER JURISDICTION"** with the court of

appeals due to the criteria being that both "**PERSONAL** and **SUBJECT MATTER JURISDICTION** being required to be found before a venue dismissal may be considered proper. **(see exhibit 3)**

The response by the attorney general of the State of N. J. --Mr. John Armstrong --responded to the appeal by addressing the issue of jurisdiction and implying said jurisdiction of the court existed. **(see exhibit 4)**

The cŏurt of appeals, having the issue of jurisdiction then before, it did there -by address this issue and found that the appellants had alleged "**NUMEROUS**

VIOLATIONS OF THEIR CONSTITUTIONAL AND STATUATORALLY PROTECTED RIGHTS" .(see appellants appendix at 168, para. 2, this is precisely the state -ments necessary to establish Sub- ject matter juririsdiction under 28 U. S. C. 1331 and 1343 along with Art. 3 and Insurance Corp. of Ireland v Compagnie Des Bauxite, 102 S. Ct. 2099 , 2104)

The appellees did then knowingly petition the court of appeals in D. C. to still dismiss for want of venue despite knowing the court must first address the issues of subject matter jurisdiction,

and the Court of appeals also being aware of this, did then allow the state to dismiss for want of venue knowing that subject matter jurisdiction would in fact then be considered resolved by them.

The appellant did inform the other appellees--same as in this appeal--of the appeal and its contents and the appellees failed to participate and respond in kind.

Because the D. C. Judge did not offer to transfer in accordance with 28 U. S. C. 1406, the appellants did file case 88-782 in the district Court of N. J. and for

for which the matter went to Judge Anne Thompson **(see exhibit 5)**

The issue of jurisdiction was an issue in case 88-0286, it was raised by the appellants and Appellee Mr. Armstrong for the State in this matter. The complaints--88-0286 and 88-782--are the same complaint involving the same isuues and same parties and this issue was rais-ed and decided by the court of appeals in Washington, D. C. and not subject to re-review or subject to attack by any of the parties in case 88-782, or permitted to be re-decided by the lower court and affirmed by the appeals panel in this

matter.

The appellees Voorhees did accept rep-resentation from an attorney not admitt-ed and authorized to practice in the District Court of New Jersey. (see appell ants brief @ pages 29-31.)

The appellees Reardon and Epler did also enter into a relationship which is prohibited by law and for which Mr. Epler was also not an admitted attorney of re-cord authorized practice in the District Courts of New Jersey.

At no time did the appellees ever claim to be challenging jurisdiction be-cause of a fraud committed agsint the

Courts in D. C. and at no time did the lower court ever confirm or address the fact that this is or was the basis upon which jurisdiction was now being challenged or re-reviewed. **(see appellant's appendix @ pages 1-21.)**

The appellants repeatedly requested a right of discovery and for leave to amend and all requests were denied.

QUESTIONS PRESENTED

1. Does any court have the right to re-decide any issue once it has been decided and the issue was raised in a case in-volving the same parties, same facts and exactly the same issues? Given that this

cannot be done, and given that the parties in this matter do not have valid answers on record for various reasons and was so argued in the brief, is any party then entitled to **default judgement** in accordance with **In Re Grossmeyor, 20 S. Ct. 535** when process has been carried out and subject matter jurisdiction exists?

2. Has the criteria of ***STARE DECISIS*** been complied with in this matter?

3. Has the court permitted the continued and known violation of Rules of Court, Rules of ethical conduct, Supreme Court decisions, and demonstrated prejudice/

pre-disposition to rule in this matter? And, in so doing, has it violated due process of law and denied other protected rights in this matter and does it have the right to so do these things?

LEGAL ARGUMENTS

POINT 1

If the court will **examine exhibit 3** it can clearly see that the appellants raised the issue of subject matter jurisdiction with the court in Washington, D. C. If the court will next **examine exhibit 4 @ page 4**, it can see that the State Attorney General's office also implied jurisdiction to the court of

appeals in that matter. If the court will next **examine exhibits 2 and 5** it can see that these two cases are in fact one in the same case. While it is true that subject matter jurisdiction cannot be conferred upon the court by the parties, **Baldwin v Travelling Men's Ass.,** **283 U.S. 522,** it is equally true that the issue of ***subject matter Jurisdic -tion*** must be reolved before any decision, including that of venue, may be resolved. **Insurance Corp. of Ireland v Compagnire Des Bauxite, 102 S. Ct. 2099, 2104; Schlanger v Seamans, 401 U.S. 487, 491, citing, Rudick v Laird,**

412 F. 2d 16, cert. den 90 S. Ct. 244, 396 U. S. 918, 24 L. Ed. 2d 197, citing Bookout v Beck, 354 F. 2d 823, 825, 4th cir.; Miss. Pub. Corp. v Murphree, 326 U. S. 438, 441; Graham v Brotherhood of Firemen, 338 U. S. 232, 235, 236; Nei -bro Co. v Bethlehem Corp., 308 U. S. 165, 168; Lucas v Hodges, 738 F. 2d 1493, 1497, C. A. D. C. 1984; Diogenes v Malcolm, 600 F. 2d 815, 818, 3rd. cir. 1985 citing Rudick SUPRA and all references of this court in Point 2 below. Thus, once the issue was raised, the court was required to decide such is -sue first, and if the court will exam-

ine Appendix page 168, para. 2, the court did just that.

Given that the above criteria is clear and that jurisdiction must first be so decided and in fact was so decided , and given further that the issue of ven -ue was raised by the state for resolu- tion and it was so resolved, and given that it was resolved in the appellant' s favor, and given that the cases involve exactly the same parties, same facts and same issues, the question of this point must be asked and decided. According to the Supreme Court in **Polizzi v Cowles Mag. , 345 U. S. 663, 665,** the lack of **ven**

-ue does not deprive a court of jurisdiction Thus, with the question raised by the State and the appellants, and being waived by failure to participate in the D. C. matter by the remaining appelees who are parties to both suits/actions, the Supreme Court has found in **Sullivan v Behimer-Blakis, 363 U. S. 335, 339, 348, 350 and _____v_____, 60 S. Ct. @320,** that once any issue has been raised, could have been raised and was not so raised or was decided, that unless said issue is raised in conjunction with a claim of **FRAUD**, it is ***RES ADJUDICATA BARRED*** from being re-raised. And

, as the ***STARE DECISIS*** criteria in D. C. has found, Improper **venue** does not declare a case as ***FRIVOLOUS***. **Anger v Revco Drug Co., 791 F. 2d 956-958, citing Sinwell v Shapp, 536 F. 2d 15 , 3rd cir. 1976 and Brondon v Dist. Of Columbia Brd. of Parole, 734 F. 2d 56, C. A. D. C. 1984. In Brondon SUPRA,** the court found that as long as a case had an arguable basis of law and fact it could noit be dismissed as frivolous. Since the court had not so dismissed in any of the above fashions--i. e. want of jurisdiction, or being frivolous and the issues were raised--the issue of juris-

diction had been raised, reolved and decided and could not re-raised by anyone in case 88-782 and could not have been joined with case 87-3605 for dismissal purposes since it was barred by ***RES ADJUDICATA***. see also, **Thompson v Whitman, 18 Wall 457, 467-469.**

Given the above, it was therfore not possible for the lower court to decide this case on want of Jurisdiction/cogni-zance--**see appendix page 18**--for which we all know that **cognizance** is defined as the ability/power/jurisdiction of a court to hear and decide a matter. **Kendal v U. S. 12 Pet. 524, 622**

, 9L. Ed 1181, 1220. this then is clearly an abuse of power and discretion, a refusal to uphold Supreme Court decisions, a demonstration of prejudice and predisposition by the lower court and a demonstration of prejudice on the part of this panel who continues to deny these appellants of their rights and to contin -ue to injure them and permit criminal wrong doing of all sorts and to bend the rules and laws in favor of the trained professional rahter than in favor of the untreained/uncounselled *pro se* person as the law requies.

Given the resolution of the problem

above, the answer to default can be found in the case of **In Re Grossmeyor, 20 S. Ct. 535**. In this case, the Supreme Court found that where the court has both subject and personal jurisdiction, and the parties have failed to appear and answer the complaint, that **MANDAMUS** may lie against the judge to enter Judge-ment by default. In this matter, we have the defendants in Voorhees not having properly and timely answered the com-plaint due to the fact that they accept-ed representation from a non-admitted attorney authorized to practice in the Federal Courts. We have Runnemede not fil

-ing a timely answer in case 87-3605 and we have Mrs. Reardon accepting representation of a non-admitted attorney of record. In case 88-782, we have Mr. Epler--the same non-admitted attorney for Mrs. Reardon in case 87-3605--again attempting to not only represent Mrs. Reardon, but he is also a co-defendant in case 88-782 which is prohibited by case law. We have Dr. Gordon, Mr. Costa and the County all not answering or timely answering the complaint. In case 87-3605 there is no who has answered according to the requirements of Rule 4 time limits, yet we have the same lower court.

judge dismissing matters of Mr. Reardon if he does not timely proceed to serve the summons and complaint. **(lower court numbers 88-1539 and 88-1204, also, as to default, see appellant's appendix @ pages 21-31.)**

Given that the appellants had continually requested timely answer, given that the appellants have been subject to personal prejudice, seeAA 156-157, and given that the parties are in valid default and have no excuse for not answering except to take the risky approach they have chosen, mandamus would be most appro-priate in this case with direction to

order relatively quick trial as to the damages phase regarding the amount of damages and who should be liable for what.

Point 2

As the court choould have seen by now , the appellants at no time were given leave to amend or permitted right to dis -covery. This situation is not consistant with ***STARE DECISIS*** or other legal cri- teria. there is no question this court attacked the complaint from the aspect of jurisdiction because it found that the case of **Rosquist v Jarret, 570 F. Supp. 1206, 1211** is controlling and

that court found that the court lacked jurisdiction, and thus the allegations such a made in this complaint were without merit. However, even given that **Point 1** is not accepted by this court for some reason, we have a further problem with the use of **Lockhart v Hoenstine, 411 F. 2d 455, 460, cert. den. 396 U. S. 941** When the plaintiff in that case had no more than his own affidavit in opposi-tion to the clerk's statement of person-al knowledge, while in this case, the plaintiff has alleged the existance of tape recorded conversations with the Judge's--defendant Miller's--staff in

which it was stated(1) the judge heard no matters on 7/2/87;(2)there is no record of either the 7/2/87 or 8/17/87 orders;(3)that the Judge would not have signed the 8/17/87 order after he was sued and(4)that hey checked the Judge's personal file,the docket itself,the Judge's calander and the Judge's desk and could find nothing to verify these orders. The implications and use of these two cases as controlling in this case are far mis-placed and their relevance and thus alters the intent of such case criteria as **Addickes v Kress & Co.**, **398 144**. Such an appication here is not

consistant with ***STARE DECISIS*** in this circuit regarding significant facts of controvercy and for discovery and summary judgement.

The next area of ***STARE DECISIS*** not complied with comes from the cases of **Colburn v Upper Darby Twp., 838 F. 2d 663, 1988; Ross v Meagan, 638F. 2d 646, 1981; Rotolo v Borough of Charleroi, 532 F. 2d 920; Kaufmann v Moss, 420 F. 2d 1270, 1970 and Negrich v Hohn, 379 F. 2d 213, 1967.** In each of these cases the court found that it is an abuse of discretion to dismiss a case for lack of jurisdiction or under R 12-B(6) for lack

of specific statements without first off
-ering the party an opportunity to amend
.(see AA @18) this decision is consis-
tant with **Foman v Davis, 371 U. S. 78.**
Since there is obviously a difference of
opinion/conclusion between "REASONABLE
MEN" this court should not have dismiss-
ed without offering said leave to amend.
this court cannot differ in opinion from
the court of appeals in D. C. on the same
case, the same parties and same issues be
-cause it is forbidden from the Surpeme
Court decision from so doing, and accord
-ing to the criteria for summary judge-
ment also indicates that if two opinions

could be reached, then dismissal is not proper either.

We then have the criteria of this court in the cases of **Solomon v Solomon, 516 F. 2d 1018, 1975; Trent Realty Ass. v 1st Fed. Sav. & Loan Ass. of Phila., 657 F. 2d 29, 1981; Cospisito v Califano, 89 F. R. D. 374, 1981 and** **Compagnie SUPRA** which found that dismissal for want of jurisdiction must be raised by the court sua sponte and not by summary judgement. For if such a motion is to be made by such process it must be denied. If the court will **examine. AA 34-55** it can clearly see an ob-

jection was strongly made by the appellants and such dismissal was granted any way and affirmed by the panel.

The next problem with ***STARE DECISIS*** is found in the cases of **Miller v U. S. , 530 F. Supp. 611, relying on Bell V Hood, 327 U. S. 685**, which found that where jurisdiction is to be tied with the merits of the facts as it relates to this issue, the court must permit the party opportunity for leave to amend to correct these technical defects. Again, the request for leave was made and was repeatedly denied.

Again, from the above criteria the

court has abused its discretion, refused to comply with STARE DECISIS, has demonstrated prejudice by refusing to apply the laws equally in this case, and has continued to demonstrate its attitude of injury to these appellants because they do not like what the appellants are attmepting to do. Especially when the case of ***Sanders et al v Sanders et al*** is pending in the District Court of the United States in Camden County before Judge Cohen This case also stems from a custody/divorce matter and he too is sueing Judges and lawyers. Why then is his case still pending and these parties

case(s) are not? Clearly, the court has abused its discretion and demonstrated its prejudice.

Point 3

The first question here is that involving Rule 9 of this court. If the 10 day rule serves no valid purpose, then why bother to have it in the rule. If a party has the right to appear and participate at any time, then the 10 day rule is not needed, for its purpose is like that for default. The failure to comply with the 10 day requirement is to establish a time for default. If the court will examine the order at the end

of this brief, it can see that some the counsel have been given a go ahead to submit bills for costs even though they did not comply with Rule 9 time requirements, the appellants submitted a brief/ motion in opposition to this practice that violates the rules and the court panel never answered this motion In fact , this is a clerk motion, was submitted to the clerk(s) office and they refused to answer it. How is this justice if a party is in default and then they can be permitted to obtain costs against the moving party? In case 88-1204 and 88-1539 Mr. Reardon served the summons and com-

plaintiff, and the court claimed it was improper but failed to allow re-service in accordance with **Gibson v Twp. of Bass River, 82 F. R. D. 122** rather than require re-filing of the complaint. The court seems to go out of its way to rule against these appellants without concern for the law or the injury it creates to and for them Where is right of the ***pro se*** to be treated as such under the law? (case law omitted here due to the well establishment of it.)

The next problem is that of the right of a court to change the intent of the Rules of Court. the rule regarding oral

argument on motions is that such arguments may be denied only if the matter pertains to disputes in the laws. But here, the court has dismissed for want of jurisdiction on a summary judgement approach As the above arguments clearly inbdicate, the denial of oral argument when said question of dismisaal is tied to the factual allegations of the complaintiff--i. e. the merrits of the facts themselves--is totally contrary to the Rule requirement and the discretion of the court given the procedure by which the court has chosen to dismiss and the case law above. This is but another ex-

ample of how the courts are prejudiced and predisposed to rule and refuse to comply with the law and legal process.

Lastly, if the court will examine the exhibit submitted tith the 5-10-89 motion to inform the court of other case law, it can see that in that case, the court found that where a judge sets a coninual pattern or practice which is directed at/against a particular group of persons, and that group is recognized as protected by the 14th Amendment, that the judge in fact is guilty of discrimination and answerable in suit in federal court whether the State laws says he can

-not discriminate or not. If the court will examine **pages AA 79-138** it can see that the appellants charged the state court judge with having establish -ed such a pattern and in accordance with the case of **Passman v Davis, 442 U. S. 228** the court could not dismiss. See also **Bell SUPRA; Brondon SUPRA @ 957 ; Palmore v Sidotti, 51 LW @4498 and Appeal #89-5180 before this court.**

Lastly we have the case of **Cort v Ash, 422 U. S. 66 and related cases,** which has found that any person has the right to either civil or criminal re- dress. If a Civil remedy will not lie, the

person has the right to file criminal charges. If the court will carefully review the appellants briefs, this brief and note that Miss Bess Meyerson was pro-secuted in New York on Federal Criminal Charges for doing exactly what the appellee Reardon has been alleged to have done here. In fact, in this case the is very strong evidence of wrong doing in the existance of the following:

1. Electronic recordings in accordance with 18 U. S. C. 2511(d) in which Mrs. Reardon was recorded as threatening to make Mr. Reardon pay for walking out on the marriage and that she would see to

it that Mr. Reardon would not see his children again if he did not do as she wished.

2. We have Mrs. Reardon being a court clerk with direct access to the Judge's chambers, being on a cordial working relationship with the judges and we have politics involved in the hiring of Mrs. reardon and her promotions.

3. We have that Judge Miller never heard any matters on 7/2/87. (recorded conversation with the Judge's staff.)

4. We have that the Judge's staff could not find a copy of the 7/2 or 8/17/87 orders in the docket, the judge's

file, the Judge's callendar or anywhere else.

5. We have a recorded conversation with the Judge's staff which admits the judge would not have signed the 8/17/87 order since he was being sued civily. and

6. We have Mrs. Reardon in possession of both of these claimed orders which bear none of the requirements of 28 U. S. C. 1738.

7. We have Mrs. Reardon and her former counsel being seen coming from the Judge's chambers from an Ex Parte conference prior to the 7/14/87 hearing, we have the court turning this hearing in-

to a KANGAROO COURT, we have threatened prosecution on the fraudulent orders, and we have the appellant having been found guilty of contempt on this fraudulent order.

8. We have the appellants writing the U. S. Attorney general--formerly Mr. Meese--regarding these charges of falsification of court documents--same as Miss Meyerson--and was told to contact the Newark Office, I did, and then never heard anything from the office.

9. Thus far, the appellants have been denied the right to proceed for civil or criminal redress.

Clearly, from the above and the allega -tions and proof available, there is more than sufficient circumstantial evidence to prosecute all of these people for con -spiracy and violations of rights. The only reasons it does not, is due to the personal point of view of the judges to protect these people simply because they are part of the system The court has clearly said one must have remedy in one form or another or their is a violation of rights in this aspect by itself. Thus far, the appellants have been denied ac- cess to any redress of wrong doing. Which process does this court intend to grant

these appellants?

CONCLUSIONS

For all of the forgoing reasons the court should grant one or more or the following items of relief.

1. A reversal of the order of the appeals panel and a mandate directing entry of default with direction to proceed to trial on the damages stage.

2. A complete review of the appellants' brief for reconsideration on all points.

3. Consideration of the relief the appellants requested/sought in their brief.

4. An order removing/barring Judge Thompson from sitting on any further matters of any of these appellants.

5. A similar order regarding this panel of three judges or an order preventing these three judes sitting togeth-er in any of these appellants future matters--i. e. only on of these judges at a time but bot two or all three togeth-er.

6. An order granting the appellants the right and assuredy that they may file criminal charges with the FBI or other appropriate agency.

7. Any other relief deemed appropri-

ate by the court.

I hereby certify under oath and penal -ty of perjury, in accordance with **Hod- gin v Agents of Montgomery Co., 619 F. Supp. 1550, 1552,** that all statements of fact are true and accurate to the best of my knowledge and belief.

Dated: May 27, 1989

John E. Reardon for the appellants

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AFFIDAVIT OF JOHN DEFERRO

I, John DeFerro, do hereby attest and affirm the following facts under oath and penalty of perjury.

1. I was with Mr. Reardon on July 26, 1989 when he was in Trenton and he reviewed the docket files in cases 87-3605 & 88-782 and found his 60 page affidavit of specific facts were not in either file.

2. On the following day, Mr. Reardon and myself had some things to take care of and he did show me his copy of his "affidavit of specific Facts" marked received 9/7/88 by the clerk William T.

Walsh

3. I was also with Mr. Reardon when he reviewed the docket in case 88-5571, Baum -garner, et al v Baumgarner, et al and saw that Judge Thompson's order of 3/28/89 was entered in that case and that it was entered as a result of the plaintiff's motion for default with no opposition having been filed and without prior notice to Mr. Baumgarner by Judge Thompson of her intent to so dismiss and why.

4. Mr. Reardon did later show me his or -der by judge Thomspon in his case, and with the exception of the parties, the orders were virtually the same in con-

tent and concept. (also, in Baumgarner it was entered sua sponte by the court and in Reardon, it was upon motion for summary Judgement.)

5. I was also with Mr. Reardon and wit-nessed the fact that 70 to 80 fathers have submitted affidavits in the Baumgarner case complaining of the similar/same problems that Mr. Reardon and Mr. Baumgarner are experiencing in the state courts at all levels.

6. I have further been apprised of Mr. Reardon's reference to my case in the U. S. District Court in Pennsylvania and can apprise this court that Mr. Reardon

has been assisting me in that matter in any way he can and that the court first dismissed my complaint, and after a motion for leave to amend specifying the differences between Lockhart v Hoenstine , and this court' s opinion of Judicial versus adminstrative acts--i. e. whether the acts are normally performed by a Judge as oposed to another person under Ex Parte Va. , the court has so granted leave to amend and is allowing the case to proceed against the judge under Forrester v White.

I further attest that presuming Mr. Reardon' s allegations are true, that if

someone other than a judge is authorized to "rubber stamp an order signed and Fil -ed" then it is my opinion that such would be an administrative act due to the case law criteria and Judge Katz order in my case.

7. I further state that Mr. Reardon has shown me the case law criteria for a judge to recuse himself, 657 F. 2d 948, 954 , that the court must view its position and actions in a case as the average per -son on the street would consider them and if the average man would consider them improper and expect the court to re -move, then the court must so remove it-

self.

After learning of Mr. Reardon's problems, such as:

A. The Judges be pre-disposed to rule as exampled by the orders in Mr. Reardon's case and Mr. Baumgarner's case and that neither of these pro se part-ies were given opportunity to a hear-ing, a right to discovery, a right to leave to amend and the court having entered virtually the same order.

B. That the court's are holding the pro se person to the strictest of applications of the rules in that the trained professional and counselled

person does not have to comply with the rules and process but the pro se does and if the pro se may gain an ad -vantage by the oposing parties fail- ure, the court will step in and pro- tect the defendants/adversary.

C. In Mr. Reardon' s case, depsite Mr. Reardon showing case law from virtual -ly every circuit court of appeals and from this court, as well as the D. C. Appeals court decisions in his case --#88-7083--on personal jurisdiction being a waivable defense if not time- ly plead in some fashion, and despite the fact that Mr. Reardon served both

the U. S. Postal Service and U. S. Attorney General, and perhaps not according to the rules as interpreted by Judge Thompson, that the Postal Ser-vice and U. S. Government failed to an-swer the complaint and failed to file a motion objecting to the court's jurisdiction because of "improper service", Judge Thompson once again stepped in and prevented the de-fendants from waiving a waivable argument and dismissed his suit for want of personal jurisdiction due to improper service, in her opinion, and placed $200.00 in sanctions against

Mr. Reardon on the claim he continues to fail to adhere to the rules of court.

D. The judges have refused to grant Mr. Reardon a right to be heard on the record, to oral argument and to the various hearings he is permitted by case law to have--i. e. adversarial hearings prior to dismissal, merrits hearing prior to dismissal, merrits hearing prior to the remand of a case removed, oral argument when questions of fact are involved, and a general hearing prior to the dismissal of any matter.

E. Manner more problems too numerous to list and count.

It is the opinion of this average per -son's belief that Mr. Reardon has not been treated fairly in the federal court system at any level and it is further my opinion that Mr. Reardon has not been bat tling the defendants, but rather the courts and Judges who have determined he will not win no matter what.

It is finally my opinion that I doubt if Mr. Reardon will ever receive a fair hearing in this circuit and before these judges and they all should have removed themselves long ago. And, that Mr. Reardon

should at least be granted re-review and a right to a proper hearing in this matter if it cannot be so had in all his other matters.

I hereby make these statements of my own free will and not out of any sense of loyalty or obligation to Mr. Reardon due to the fact that if the Judges are made to believe and made aware that they can do it to Mr. Reardon and get away with it, they will be able to do it in my case and I do not want this, for my case involves the loss of$300,000.00 in actual monies. And if I cannot get relief in state court--as is being claimed--and

cannot get it here in federal court, where are men to go to protect their rights.

Dated: 8/7/89 (John DeFerro)
John DeFerro

2/8/94
My Commisions Expires

By: (Ann M. Chain)
Notary Public

This is one of 80 affidavits Filed By Fathers in 3 currently pending Cases in Federal Court The cases are Auger v Auger, Sanders v Sanders and Bumgarner v Warth

I, Raymond Auger, being of full age and being a divorced non-custodial parent in the state of New Jersey state as follows:

[1] That as a father, I have been sexually discriminated against in the New Jersey Family Court, County of Burlington, and have had my rights violated and my children's rights violated.

[2] the present divorce system in New Jersey is inherently flawed and has created huge problems in my life and my

children's lives.

[3] The present divorce system will not give custody or joint custody, which is in the children's best interests.

[4] I have suffered visitation inter-ference and have not been able to up-hold my rights because **the court will not enforce their own orders.**

[5] I am paying excessive child sup-port that is being used without any ac-countability of how it being spent. These excessive amounts have put me into a fi-nancially precarious position

[6] I cannot get decent representa-tion in Family Court by attorneys. Due

Process is being violated.

SIGNED: Raymond Auger Dated: 2/25/89

ADDRESS: 10 Brockton Way, Mt. Laurel, N.J.

ZIP: 08054 PHONE(optional): (609-866-9598)

Larry Bumgarner
26 West Marlton Avenue
Absecon, N. J. 08201

March 21, 1989

William T. Walsh
U. S. District Court
Box 515
Trenton, N. J. 08605

Re: Bumgarner v Warth, et al Filed: 4/7/89
Civil Action 88-5571 (AET)

Dear Mr. Walsh,

On March 28, 1989, Judge Anne Thompson signed a court order dismissing this civ -il action I feel that there has been a mistake made and would like a reconsider -ation of the dismissal.

The facts and legal issues were for- warded to Judge Devine instead of Judge

Thompson Judge Thompson therefore ruled without fully understanding that this is a Civil Rights case.

On March 21, 1989, Judge Devine, in the scheduling conference felt strongly about the facts and the law to order everyone back into his chambers on May 1 , 1989.

Judge Thompson must realize that this case is not an isolated event construed by someone who just wants to claim that his constitutional rights have been vio -lated. Fathers and children throughout the entire state of New Jersey are being treated as second rate citizens without

certain rights that they should be accorded. I have affidavits of an unusually large number of fathers to substantiate what I say. Judge Thompson' s decision sends a direct message to the State of New Jersey and its officials that they can proceed unheeded in their pursuit of their persecution of United States citizens. the most important function of the Federal Court system is to provide protection of this sort of behavior against te citizens of this country.

Therefore, because of the legal issues that I have enclosed, I respectfully request reconsideration of Judge Thompson'

s decision

Very truly yours,

Larry Bumgarner, pro se

Speacial Note: the district court has established a pattern with pro se people whereby it brings them in -to court for pre-trial conferences before a magistrate, the defendants then file some form of motion to dismiss without the right of the opinion of the magistrate as per the F. R. Civ. P., Local Rules of Court and 28 U. S. C. 636(b)(1). In the petitioner's case and this case, there is no such opinion on record of the

magistrate even though the, magi-
strate in both cases apparently
held different views of these cases.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Chambers of
Anne E. Thompson
Judge

U. S. Court House
402 E. State Street
Room 345
Trenton, N. J. 08605

September 1, 1989

John M Armstrong
Deputy Att. Gen.
Hughes Justice Complex
CN-116
Trenton, N. J. 08605

John E. Reardon
Oakridge Terrace
B-33
Runnemede, N. J.
08078

David C. Epler
41 Grove St.
Haddonfield, N. J. 08033

Re: Reardon, et al v Reardon, et al,
Civil No. 88-782 (AET)

To All PArties:

Pending before the court Are several motions in the above case filed by various parties. The court will consider all

such motions. whether filed for Sept. 15 or Sept. 19, on its Sept. 15 motion day. All motions will be considered on the papers wihtout oral argument pursuant to Fed. R. Civ. P. 78. All responses must be received by the court no later than Sept. 15, 1988.

Very truly yours,

Anne E. Thompson

U. S. D. J.

AET: jmd

Note: compare this to items 11, 12, 15, 18, 19, 22, 23, 25 & 34 of pages 45-54 of the appendix and items 11, 12, 13 & 20 of pages 60-63 of the appendix. (What hearing is the court referring to?)

U.S. District Court For
The District of N.J.

See App. @ 141

John J., Judith A.
& John E. Reardon
Oakridge Terrace B33
Runnemede, N.J. 08078

Plaintiffs,

Judge Miller, et al

Defendants.

Civil Case No. 88-782
& 87-3605 (AET)

Specific Facts

Facts

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1. The Defendant Reardon was able to get her start in the

89-6152

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1988

John E., John J., and Judith A Reardon,
Petitioners,

VS

Virginia Reardon, Theodore M Costa, David C. Epler, Dr. Marshal Gordon, Dr. David M Goldstein, Judges Natal, Miller, and Scarduzio, Camden Co. Court System, and any yet unknown person or agency,
Respondents.

John E. Reardon
Petitioner,

VS

Virginia Reardon, Sgt. Smarziaski, Ann Cara, Twp. of Voorhees, and the Police Dept. of Voorhees.
Respondents.

SUPPLAMENTAL BRIEF

John E. Reardon
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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1988

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LEGAL ARGUMENTS

1] Additional Arguments in support of the Lower Court's Jurisdiction.

According to the cases of *Pierson v Ray, 386 U.S. 547 and Ashe v Cort, 422 U.S. 68* any person who is a member of the class identified by the Criminal Code has a standing to sue under that statute to recover damages in the amount established by the statutes in question. In this case the plaintiff clearly cited the statutes on Peonage, he referred to 18 U.S.C. 241 violations, he refered to the statutes on perjury, obstruction of justice, fraud, and extortion. Since the plaintiff is in fact a citizen of the United States, he must be by necessity a member of the class the law was designed to protect as they do not specify such by race as the case of *Ashe SUPRA* clearly indicates no

such classification necessary for the right to assert such a standing. Therefore, since the laws were designed to protect "all U. S. Citizens" in the exercise of their rights, the court had jurisdiction over these matters by way of the Federal Statutes.

2] Additional Arguments on Point 2 (d) regarding abuse of discretion.

This court found in the case of *Lawr-ence v State Tax Comm., 286 U. S. 276,* Constitutional rights are lost when a court is presented with a question and the court either fails to answer that question or erroneously answers that question. In this case, the plaintiff questioned the constitutionality of the ac-tions of a judge/court system which en-forces its laws with a heavy hand or ev-il eye. *Yickwo v Hopkins, 118 U. S. 356, 373*

, 374. Since the missing 60 page affidavit gave specific examples of how this was being accomplished, the plaintiff, who is a member of a protected class, has now been denied rights by the court's refusal to address this issue and allow discovery on this topic/subject.

Further, this court has found that cases triable at common law for negligence, fraud, deceit or malicious prosecu-tion were commonly tried by jury and therefore protected by the 7th Amendment of the U. S. Constitution. *Moores Federal Practices, Vol. 4, Sec. 22. 01, page 22-17.* Further, *Moore's Federal Practice at the same page cites Connolly v U. S., 149 F. 2d 666, 9th cir., 1945,* that a suit under the Federal Statutes which seeks damages consistant with the statute presents a Legal issue triable by the jury, and not

the judge.

Further, the courts found in *Queen Inc. v Woods, 369 U.S. 469, Edwards v Boeing Ver-tol, 717 F.2d___ and in Howard v Kunen, Civ. Ac. No. 73-3813, 12/3/73,* that where a case is both equitable and legal in nature and a right of trial by jury exists for either, said trial shall not be denied. Thus, the actions of the court to misapply the law, to ignore issues, and to examine only those issues it wished to examine has denied rights and the court has abused its discretion. In fact, the above criteria has established that when legal or factual issues are at stake and where a trial by jury is the normal process as determined by the com-mon law rights under the 7th Amendment --which statuatory rights establish such legal rights--then, even if the ques

-tion of the court's jurisdiction is raised, but raised in conjunction with the merritts of the case, then the jury shall trie the matter and the right to jury trial shall not be denied. *Moore's Federal Practice Manual, Jury trials, page 22-33, Land v Dollar, 330 U.S. 258 and Bailey's Bakery, LTD. v Continental Baking Co. (D. Haw. 1964), 9 F. R. Serv. 2d 38a. 75, Case 1.* Again, there is an abuse of discretion on the grounds that the court has dismissed the matter for want of jur-isdiction on the merrits upon motion for summary judgement on an action which contains issues normally tried by the jury on all questions presented to the court. The jury had the right to determine both as to questions of Law and fact as their common law right clearly indicates. Again, this is abuse of discre

-tion for the court to trie an issue that is the right of the jury when a jury trial was in fact demanded.

3] Additional arguments under point 3.

Aside from the arguments presented in the Petition, there is the right to sue under the Legal Theory of Joint Tort Feasors. In the case of *Peterson v Stanc -zak, 48 F. R. D. 426, D. C. Ill., 1969,* the court found that under this theory and that of conspiracy, the plaintiff was not and could not be required to provide his proofs as a matter of law in defense against a motion to dismiss. *Id. @ 428.* The Shephardization of this case produces only the case of *Imbler v Pachtman, 424 U. S. 409.* Since this case has not been mod -fied, overturned or altered in any man- ner, it is still valid case Law. Mr. Denman has used this case continuously over

these years and it has been adopted in numerous unreported cases as controlling. On this concept of Joint Tort Feasors, and conspiracy, it is clear that there is a right of action against the private de-fendants since the court found that the judges apparently committed wrong, but that they simply were immune from dam-ages.

However, they were still improperly re moved from the action in that the peti-tioners are certainly entitled to injunc-tive, declaratory, costs and prosepective relief. While said claims were not directly stated in the case, the petitioners did ask for any other relief deemed appropri-ate by the court or jury. *Pulliam v Al-an 101 S. Ct. 1968, Imbler SUPRA @440-443, Peterson SUPRA @428-432, Ex Parte Va., 100 U. S. 369 and Yickwo SUPRA*

Given that the legal issues triable by jury are required to be heard and set -tled first, the court has denied the right of trial by jury for the question of damages based upon the triable issues of fraud and negligence and conspiracy to say the least. These cases clearly give a standing for said suit, and it is equally clear the standard applied in this case is one to be apllied at trial and the jury has been denied the right to determine as to both law and fact. The question here is not whether the plaintiff can establish by competant proof the existance of a conspiracy, for this is for a jury to decide. Thus, the thresh -hold question of "state action/action under color of law" is established by the rudimentary pleadings. Beyond that, the court may not extend its power in

an area that Congress is not even permitted to transgress for the Power of the lower court is granted by Congress and thus Congress could not grant the court something it has no power to trans-gress. *Moores Federal Practice, Jury Trials, pages 22-15, -16-21, and -22.* Therefore, the petitioners could not be forced to defend on motion to dismiss, and nor could the petitioners be forced to produce anything beyond the rudimentary allegations and the question of State Action or Action under color of Law is self supporting by the allegations made as the case of *Peterson SUPRA* suggests.

For all the forgoing reasons and reasons previously stated in the original petition, the lower court orders should be reversed and the cases remanded.

Dated: 10-9-89

John E. Reardon

John E. Reardon for the petitioners